

FILE COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1959

No. [REDACTED]

4

INTERNATIONAL ASSOCIATION OF MACHINISTS,
ET AL., APPELLANTS,

vs.

S. B. STREET, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA

FILED JULY 30, 1959
JURISDICTION NOTED OCTOBER 12, 1959

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

No. 258

INTERNATIONAL ASSOCIATION OF MACHINISTS,
ET AL., APPELLANTS,

vs.

S. B. STREET, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA

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Original

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[fol. 1]

**IN THE SUPERIOR COURT OF BIBB C
STATE OF GEORGIA**

J. M. PAYNE et al.

v.

GEORGIA SOUTHERN AND FLORIDA RAILWAY COMP

ORIGINAL PETITION

To the Superior Court of Said County

The petition of J. M. Payne, Mrs. Myrtle R. V. Dungan, Charles R. Cox, F. P. Gressett, J. I. Josephine S. Chambers, S. B. Street, J. W. S. A. G. Hyder respectfully shows.

1.

That the Georgia Southern and Florida Railway Company is a Georgia Corporation, having its principal office and place of business in Bibb County, Georgia.

2.

That the Southern Railway Company is a Virginia Corporation, operating in the State of Georgia, having its principal office and agent in Bibb County, Georgia.

3.

That the Cincinnati, New Orleans and Texas Railway is a corporation operating in the State of Georgia and having an agent in this State.

[fol. 2]

4.

That the Alabama Great Southern Railroad Company is an Alabama Corporation operating in the State of Georgia and having an agent in this State.

5.

That the New Orleans and Northeastern Railway Company is a Louisiana Corporation, having an office in the State of Georgia.

6.

That the Carolina and Northwestern Railway is a corporation duly incorporated in the State of North Carolina, South Carolina, and Virginia, which company has an office and agent in the State of Georgia.

7.

That the New Orleans Terminal Company is a Corporation, having an office and agent in the State of Georgia.

8.

That the St. Johns River Terminal Company is a Corporation; having an office and agent in the State of Georgia.

9.

That the Harriman and Northeastern Railway is a Tennessee Corporation, having an office in the State of Georgia.

10.

That the International Association of Master Craftsmen, Union of Labor Organization, transacting business in Bibb County, Georgia, and has an office in said County.

[fol. 3]

11.

That the International Brotherhood of Iron Ship Builders and Helpers of America is a Union of Labor Organization, transacting and doing business in Bibb County, Georgia, and has an agent in said County.

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Machinists is a
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of Boilermakers,
erica is a Labor
business in Bibb
d County.

12.

That the International Brotherhood of Drop Forgers and Helpers is a Labor Organization acting and doing business in Bibb County, and in Bibb County, Georgia.

13.

That the Sheet Metal Workers International is a Labor Organization, transacting and doing business in Bibb County and has an agent in Bibb County,

14.

That the International Brotherhood of Electers is a Labor Organization, transacting and doing business in Bibb County and has an agent in Bibb County, Georgia.

15.

That the Brotherhood of Railway Carmen is a Labor Organization, transacting and doing business in Bibb County, Georgia, and has an agent in said

16.

That the International Brotherhood of Firemen and Helpers, Roundhouse and Railway Shop Labor Organization, transacting and doing business in Bibb County, Georgia, and has an agent in said County.

[fol. 4]

17.

That the Brotherhood of Railway and Steam Freight Handlers, Express and Station Employees is a Labor Organization, transacting and doing business in Bibb County and has an agent in said County.

18.

That the Brotherhood of Maintenance of Way is a Labor Organization, transacting and doing business in Bibb County, Georgia, and has an agent in said

19.

That the Order of Railroad Telegraphers is a Labor Organization, transacting and doing business in Bibb County, Georgia, and has an agent in said County.

20.

That the Brotherhood of Railroad Signalmen is a Labor Organization, transacting and doing business in Bibb County, Georgia, and has an agent in said County.

21.

That National Organization Masters, a Labor Organization, transacting and doing business in Bibb County, Georgia, and has an agent in said County.

22.

That National Marine Engineers Beneficial Association is a Labor Organization, transacting and doing business in Bibb County, Georgia, and has an office in said County.

23.

That the American Train Dispatchers Association [fol. 5] Labor Organization, transacting and doing business in Bibb County, Georgia, and has an agent in said County.

24.

That Railroad Yardmasters of America is a Labor Organization, transacting and doing business in Bibb County, Georgia, and has an agent in said County.

25.

Petitioner J. M. Payne is an employee of the Georgia Railway Company, having been in the company in the Signal Electrical Department since 1925, 1925, with seniority rights dating from 1926, 1926.

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employ of said Com-
ment since February
ng from September

26.

Petitioner J. T. Duncan is an employee
and Northeastern Railroad Company, be-
Section Foreman, with seniority rights of

27.

That Charles R. Cox is an employee of
New Orleans and Texas Pacific Railway
a job assignment as Clerk, with seniority
1, 1927.

28.

That F. P. Gressett is an employee of the
Southern Railroad Company, with a job
Section Foreman, with seniority rights f
1919.

29.

That J. B. Shelton is an employee of the
way Company, with a job assignment of Sig
with seniority rights from 1924.

[fol. 6]

30.

That Josephine S. Chambers is an empl
Orleans Terminal Company, holding the p
Clerk, Superintendent of Terminals, with
from November 21, 1920.

31.

That S. B. Street is an employee of the N
Northeastern Railroad Company, his pres
being General Clerk, with seniority right
ber 3, 1917.

32.

That J. W. Simpson is a member of the
Terminal Company, with a job assignment
Building Foreman, with seniority rights d
vember 15, 1919.

33.

That A. G. Hyder is an employee of the Carolina and Northwestern Railroad Company, with the job assignment of Rate Clerk with seniority rights dating from January 14, 1924.

34.

All of the petitioners named in this petition are threatened with discharge because of the agreement hereinafter set out and entered into between the various Railroad Companies named in this petition as defendants.

35.

All of the petitioners are threatened with discharge from employment on June 15, 1953, unless each of the petitioners either join or obligate themselves to remain members of [fol. 7] the various labor organizations applicable to the craft or trade of each of these petitioners.

36.

Petitioners named in this petition for good and sufficient cause do not desire to become members of the labor organization applicable to their craft or trade, and those who at the present time may be or who in the past have been members of a labor organization object to being required to pay dues and maintain their membership in the various labor organizations named herein as a condition precedent to their continued employment with the various carriers by whom the petitioners are now employed.

37.

All of petitioners are threatened with discharge from employment and will be deprived of their means of earning a livelihood unless the contract complained of in this petition and the action of the defendants in enforcing said contract is enjoined by this Honorable Court.

38.

Petitioners bring this action in behalf of themselves, and others similarly situated who may be allowed by the court to intervene and be made parties plaintiff.

39.

Petitioners are employees of one of the railway carriers herein designated as defendants and allege that they have at all times performed their duties as employees in a capable and efficient manner.

40.

Some of the petitioners are residents of the State of Georgia and entitled as such to the protection and benefit of all laws of the State of Georgia and of the United States.

[fol. 8]

41.

Petitioner allege that the defendants herein named as carriers and those named herein as labor organizations did on the 27th day of February, 1953, enter into a contract, effective April 15, 1953, a copy of which agreement is hereto attached to this petition, identified as Exhibit "A". All the provisions of the contract set out in this Exhibit "A" are hereby made a part of this petition as effectually as if the terms of this contract were set out in the petition. This contract may be hereafter referred to and is commonly known as "Union Shop Agreement". Petitioners allege that Section 1 of this contract provides as follows:

"In accordance with the subject to the terms and conditions hereinafter set forth, all employes of the Carrier now or hereafter subject to the rules and working conditions agreements between the parties hereto, except as hereinafter provided, shall, as a condition of their continued employment subject to such agreements, become members of the organization party to this agreement representing their craft or class within sixty (60) calendar days of the date they first perform compensated service as such employes after the effec-

tive date of this agreement, and thereafter shall maintain membership in such organization; except that such membership shall not be required of any individual until he has performed compensated service on thirty (30) days within a period of twelve (12) consecutive [fol. 9] calendar months. Nothing in this agreement shall alter, enlarge or otherwise change the coverage of the present or future rules and working conditions agreement."

42.

Section 9 of this agreement provides as follows:

"An employe whose employment is terminated as a result of non-compliance with the provisions of this agreement shall be regarded as having terminated his employe relationship for vacation purposes."

43.

Section 10 of the contract in substance provides that the carrier party to this agreement shall periodically deduct from the wages of employes initiation fees and assessments necessary to maintain membership of employe in the particular labor organization applicable to such laborer's craft and pay such dues and assessments over to such labor union or organization.

44.

Petitioners allege that they have been notified that unless they, within sixty days from and after April 15, 1953, become members of the organization, party, or labor union representing their craft or class that their employment will be terminated and that they will not be permitted to remain in the employ of their employer unless they do become, or remain members of the labor organization applicable to their particular craft.

[fol. 10]

45.

Petitioners allege that such contract forcing them to join or remain members of a particular labor organization ap-

plicable to their class or craft is illegal, unconstitutional, and void and is in direct violation of and in conflict with the acts of the Legislature of this State, which acts are commonly known as "The Right to Work Act" and which is found in the Acts of 1947, page 616-620, and which act is set out in the Georgia Code Annotated in the pocket part supplement thereto and will be found in sections 54-810 through 54-908.

46.

Section 54-804 of this Act provides as follows:

"It shall be unlawful for any person, acting alone or in concert with one or more other persons to compel or attempt to compel any person to join or refrain from joining any labor organization, or to strike or refrain from striking against his will, by any threatened or actual interference with his person, immediate family, or physical property, or by way threatened or actual interference with the pursuit of lawful employment by such person; or by his immediate family."

47.

Section 54-902 of said Act provides as follows:

"No individual shall be required as a condition of employment, or of continuance of employment, to be or remain a member or an affiliate of a labor organization, or to resign from or to refrain from membership [fol. 11] in or affiliation with a labor organization."

48.

Other sections of this Act provide that any provision in a contract between an employee and a labor organization which requires as a condition of employment, or continuance of employment, that such employee must be or remain a member or an affiliate of a labor organization is contrary to the public policy of this State and any such provision in any such contract shall be absolutely null and void.

49.

Said Act further provides that it shall be unlawful for any employer to contract with any labor organization or for any labor organization to contract with any employer so as to make it a condition of employment of any individual, or of continuance of such employment, that such individual be or remain a member of a labor organization or that such individual pay any fee, assessment, or contribution of money whatsoever, to a labor organization.

50.

The contract entered into by the defendants in this case is in violation of this Act of the General Assembly of Georgia and the enforcement or execution of such contract or of any of its terms making membership in a labor organization a condition precedent to employment or continuing in the employ of any of the carriers named herein is subject to be enjoined provided by said Acts of 1907 which are set out in the Georgia Annotated Code Sections 54-908.

51.

Petitioners allege that the contract so entered into by the defendants herein violates the 5th and 14th Amendments to the Constitution of the United States in that it deprives these petitioners of liberty and property without due process of law.

[fol. 12]

52.

The 14th Amendment to the Constitution of the United States provides and is as follows:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

53.

Petitioners allege that the agreement entered into by defendants and which defendants are now threatening to enforce deprives petitioners of liberty and property without due process of law for the following reasons, to-wit,

(a) Said agreement and contract by which these petitioners are sought to be governed was entered into without the knowledge or consent of petitioners and without giving petitioners any opportunity to be heard.

(b) Petitioners are deprived of the right to contract, the right to earn a living, which rights are fundamental, natural, and inherent, without the consent of petitioners, against their will, when they are not parties to such contract and have not been given any opportunity to be heard or contest or oppose the terms of such contract.

54.

The alleged contract violates Section 2-102 of the Code [fol. 13] of Georgia, which is paragraph 2 of Article 1 of the Constitution of the State of Georgia, which provides:

"Protection to person and property is the paramount duty of government, and shall be impartial and complete."

55.

The alleged contract which undertakes to deprive petitioners of their right to work and earn a livelihood, unless they join or remain a member of some labor organization applicable to the particular trade or craft of such petitioners deprives your petitioners of their right of personal liberty, in that it denies to petitioners the right to contract for employment and denies to petitioners the right to work for a living in their occupation or vocation, unless petitioners agree to join and pay dues to a labor organization applicable to the trade or craft of petitioners.

56.

Petitioners allege that the enforcement of this contract known as the "Union Shop Agreement" deprives them of

protection to a valuable property right which is to sell their labor for such price and on such terms as petitioners desire and denies them of the privilege of working in their usual occupation, without paying a labor organization for such purpose.

57.

Petitioners allege that said agreement and contract entered into is in contravention of and violates provisions of Article 1 of the Constitution of the State of Ohio which provides as follows:

"No person shall be deprived of life, liberty or property except by due process of law."

Petitioners allege that the enforcement of the contract [fol. 14] will deprive petitioners of liberty and property without due process of law for the following reasons:

(a) Petitioners are not parties to this contract and consent thereto and were given no opportunity to voice their approval or disapproval of such contract.

(b) Such contract denies petitioners the right to join or decline to join any labor organization, and is mandatory that they join or remain a member of such organization in order to be permitted to work.

(c) It deprives them of their liberty in that it denies petitioners the right to work at their usual occupation to earn their livelihood in any lawful calling and petitioners join and remain members of a labor organization.

(d) The right to contract, the right to earn a living, a fundamental, natural, and inherent right, in fact a sacred and valuable right of a citizen may be taken away from petitioners by virtue of an agreement to which they are not a party, to which they did not agree, and which they do not approve, such rights being denied petitioners by virtue of the contract entered into by defendants.

58.

Petitioners allege that the "Union Shop" contract negotiated and entered into by the defendants

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Agreement",
named here-

in, affects the rights of these petitioners and denies
due process of law in that the liberty of petitioners
quires that each petitioner have the right to work for
living in the common occupations of the community,
being the very essence of personal freedom, and a
which should be protected from both labor unions,
employers who may attempt to deprive petitioners of
right either because petitioners are or are not mem-
of a labor union.

[fol. 15]

59.

The "Union Shop Agreement" sought to be enforced
this case is illegal, null, unconstitutional, and void be-
it deprives petitioners of liberty, and freedom of con-
which include the right of petitioners to be free in the
joyment of all their facilities and to use them in all la-
ways, to live and work where they will and earn t
livelihood by any lawful calling. This agreement
trarily interferes with and annuls the right of contrac-
exchange work and labor for money; the right of t
petitioners to earn a living. The contract destroys
freedom of petitioners and forces them to work under
ditions unacceptable to them and makes these petiti-
subservient to the dictates of these defendants as to
and under what terms and conditions these petitioners
carry on and pursue their occupation, and requires t
to pay for the right to work, for they are required to
dues and assessments for the privilege of working.

60.

Unless the defendants are restrained and enjoined, t
petitioners will be discharged from employment and
prived of their means of livelihood and will (sic) irrepar-
damage and have no adequate remedy at law, and wi-
denied the right to work, and will be deprived of all p-
leges and benefits resulting from their employment and
damages are not capable of exact determination and
reparable and serious damage and injury will result un-
this court grants injunctive relief.

Wherefore, Petitioners pray

(a) That a permanent injunction be granted defendants from enforcing said contract and petitioners unless petitioners join or remain of a union.

(b) That the "Union Shop Agreement" be declared unconstitutional and in violation of the Georgia.

[fol. 16] (c) That a temporary injunction and an order be issued enjoining defendants from petitioners and others similarly situated, and the enforcement of said contract be enjoined until further order of this Court.

(d) That defendants, each of them, their agents, servants and employees and persons acting in concert with them, be restrained from discharging petitioners for failure to become or remain members of the Local Union applicable to the craft or trade of such employees, and from enforcing the contract known as "Union Shop Agreement".

(e) That petitioners have all other and further necessary relief to adequately protect their rights.

(f) That process issue requiring defendants to appear at the next term of this court, to answer the complaint.

T. Arnold Jacobs, Attorney for Petitioners

Duly sworn to by J. M. Payne, jurat omitted

[fol. 38]

IN THE SUPERIOR COURT OF BIBB COUNTY, GEORGIA

Case No. 16537

[Title omitted]

PETITION OF CHARLES L. BRADFORD, ET AL., TO INJUNCTION

Come now Charles L. Bradford, Hazel E. Cook, J. H. Davis, R. N. Durvin, Mrs. Elizabeth

T. P. Ferguson, Mrs. Edna G. Fritschel, D. E. Humphries, Miss N. M. Looper, C. H. Miller, William H. Trentham, A. G. Ward, Jr., Mary Inez Williams, Mrs. M. S. Walker, Thomas E. Brown, and Robert D. Young, and petition the Court to allow them to intervene in and become plaintiffs to the above-styled proceeding, and in support of this petition to intervene show the Court as follows:

1.

Petitioners are residents of Cobb, DeKalb, and Douglas Counties in the State of Georgia, with addresses as follows: Charles L. Bradford, 305 Thompson Avenue, East Point, Georgia;

Hazel E. Cobb, 130 Eleventh Street, N.E. Atlanta, Georgia;

[fol. 39] R. O. Cook, Route 2, Smyrna, Georgia;

J. H. Davis, 221 North Candler, Decatur, Georgia;

R. N. Durvin, 1032 Faith Avenue, S.E., Atlanta, Georgia;

Mrs. Elizabeth Ferguson, 764 Greenwood Avenue, Atlanta, Georgia;

T. P. Ferguson, 764 Greenwood Avenue, N.E., Atlanta, Georgia;

Mrs. Edna G. Fritschel, 1206 Peachtree Street, Atlanta, Georgia;

D. E. Humphries, Hapeville, Georgia;

Mrs. M. S. Walker, 1473 Fairview Road, N.E., Atlanta, Georgia;

Thomas E. Brown, 2795 Tupelo Street, S.E., Atlanta, Georgia;

Miss N. M. Looper, 75 Ponce deLeon Avenue, N.E., Atlanta, Georgia;

C. H. Miller, 825 St. Charles, N.E., Atlanta, Georgia;

William H. Trentham, 2029 Pennington Place, S.E., Atlanta, Georgia;

A. G. Ward, Jr., 928 Ponce deLeon Avenue, N.E., Atlanta, Georgia;

Mary Inez Williams, 313 Fourth Street, N.E., Atlanta, Georgia;

Robert D. Young, 1720 Peachtree Road, N.W., Atlanta, Georgia.

[fol. 40]

2.

Petitioners are each and all employees of Southern Railway Company, and have (years) fulfilled the duties of their employment and faithfully, and desire to continue in such

3.

None of petitioners is a member of any of labor organizations, and all of petitioners principle as well as on legal constitutional grounds are compelled to join such unions.

4.

Petitioners herein are situated similarly, in the action now pending, and the enforcement of April 15, 1953, between the defendant Southern Railway Company, and the other railroad on the one hand, and the labor organization on the other hand, would serve to deprive them of their means of livelihood, or else compel them to join such unions, to join one of the labor unions.

5.

Petitioners have no adequate remedy at law.

Wherefore, petitioners respectfully pray that the Court grant them leave to intervene in, and become parties to, the above-captioned proceeding, and for such other and further relief as to the Court may seem just.

[fol. 41]

Respectfully submitted,

Gambrell, Harlan, Barwick, Russell
Smythe Gambrell, W. Glenn Harlan
Moye Jr., Attorneys for Petitioners

825 Citizens & Southern National Bank
Atlanta 3, Georgia, Walnut 5951.

[fol. 42] *Duly sworn to by Robert N. Durkin,
omitted in printing.*

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of the defendant
rs object on prin-
grounds to being

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union defendants.

at law.

pray that this Court
become parties plain-
, and for such other
eem just and proper.

ed,

ussell, & Smith, E.
Harlan, Charles A.
itioners.

Bank Building, At-

. Durvin, et al., jurat

[fol. 45]

[File endorsement omitted]

IN THE SUPERIOR COURT OF BIBB COUNTY

ORDER GRANTING LEAVE TO INTERVENE—June 12,

The above and foregoing petition read and con-
let the same be filed. Petitioners named in said
are hereby granted leave to intervene in and to
parties to the above-captioned proceeding, and th
are hereby made parties plaintiff in said case.

Let a copy of this petition, together with this c
served upon the defendants herein.

This 12th day of June, 1953.

Mallory C. Atkinson, Judge, Bibb Superior

[fol. 46]

IN THE SUPERIOR COURT OF BIBB COUNTY

J. M. PAYNE, MRS. MYRTLE R. WHITE, et al., as P
and CHARLES L. BRADFORD, HAZEL B. COBB, c
Intervenors,

vs.

GEORGIA SOUTHERN AND FLORIDA RAILWAY COMP
other named Railway Companies, as Defend
INTERNATIONAL ASSOCIATION OF MACHINISTS, a
named Labor Associations, as Defendants.

FIRST AMENDMENT TO PETITION—filed June 27,

Now come the petitioners, and by leave of
first obtained amend the petition heretofore fil
following manner, to-wit,

1.

Petitioners strike paragraph 38 of the petiti
lien thereof allege the following.

Petitioners bring this action as a class on behalf of themselves but in behalf of others similarly situated.

2.

Petitioners amend paragraph 10 of the petition stating that R. H. Hubbard is a member of the [fol. 47] and it is necessary that he be named as a defendant, individually and/or as class representative of said defendant. Said named defendant is a resident of Bibb County, Georgia.

3.

Defendants amend paragraph 11 of the petition stating that J. R. Westbrook is a member of the organization and is a necessary party, individually and/or as representative of this organization. Defendant is a resident of Bibb County, Georgia.

4.

Petitioners amend paragraph 12 of the petition stating that C. J. Brice is a member of said organization and is a necessary party, individually and/or as representative of said organization. Defendant is a resident of Bibb County, Georgia.

5.

Petitioners amend paragraph 13 of the petition stating that H. H. Dent is a member of the organization and is a necessary party defendant, individually and/or as representative of said defendant. H. H. Dent is a resident of Bibb County, Georgia.

6.

Petitioners amend paragraph 14 of the petition stating that T. J. Roberts is a member of the organization and is a necessary party defendant, individually and/or as representative of said defendant. T. J. Roberts is a resident of Bibb County, Georgia.

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others similarly

e petition by alleg-
said organization,
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representative of said
a resident of Bibb

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ly and/or as class
Defendant is a resi-

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ally and/or as class
Defendant is a resi-

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said association and
dually and/or as class
H. Dent is a resident

the petition by alleg-
f said association and
dually and/or as class
J. Roberts is a resi-

7.

Petitioners amend paragraph 15 by alleging that [fol. 48] Chapman is a member of said defendant organization and is a necessary party defendant, individually and/or as class representative of said defendant. Chapman is a resident of Bibb County, Georgia.

8.

Petitioners amend paragraph 16 by alleging that Craig is a member of said defendant organization a necessary party defendant, individually and/or a representative thereof. Lewis Craig is a resident of Bibb County, Georgia.

9.

Petitioners amend paragraph 17 of the petition alleging that J. D. Avera is a member of said defendant organization and is a necessary party, individually as class representative thereof. J. D. Avera is a resident of Bibb County, Georgia.

10.

Petitioners amend paragraph 18 of the petition alleging that R. K. Lanfair is a member of said organization and is a necessary party defendant, individually as class representative thereof. R. K. Lanfair is a resident of Bibb County, Georgia.

11.

Petitioners amend paragraph 19 of the petition alleging that E. V. Peed is a member of said organization and is a necessary party, individually and/or a representative thereof. E. V. Peed is a resident of Bibb County, Georgia.

12.

Petitioners amend paragraph 20 of the petition alleging that F. O. Dasher is a member of said organization [fol. 49] and is a necessary party, individually as class representative of said defendant. F. O. Dasher is a resident of Bibb County, Georgia.

13.

Petitioners amend paragraph 23 of the petition by alleging that T. W. Grimmer is a member of said organization and is a necessary party defendant, individually and/or as class representative thereof. T. W. Grimmer is a resident of Bibb County, Georgia.

14.

Petitioners amend paragraph 24 of the petition by alleging that T. J. Dame is a member of said organization and is a necessary party, individually and/or as class representative thereof. T. J. Dame is a resident of Bibb County, Georgia.

Wherefore, Petitioners pray that this amendment be allowed and filed and that said defendants named therein be made parties defendant, individually and/or as representatives of said organizations, and that a rule nisi issue requiring defendants to show cause before the court at a time and place to be fixed by the court why they should not be made parties defendant and why the relief prayed in the petition should not be granted.

T. Arnold Jacobs, Attorney for Petitioners.

Duly sworn to by J. M. Payne, jurat omitted in printing.

[fol. 50]

[File Endorsement Omitted]

The foregoing amendment being presented to the court, it is, after consideration thereof, ordered that said amendment be allowed and filed, subject to the right of defendants to demur or object thereto on legal grounds.

Ordered that the defendants show cause before the court on the 24th day of July, 1953, at 10:00 A.M. why they should not be made parties defendant, individually and/or as class representative of the organization in which they are alleged to be members, and why the relief prayed in the petition should not be granted.

Ordered further that a copy of the petition and this amendment be served personally upon the defendants.

So Ordered, this 27th day of June, 1953.

Mallory C. Atkinson, J.S.C.M.C.

[fol. 51]

IN THE SUPERIOR COURT OF BIBB COUNTY, GEORGIA
Case No. 16537

J. M. PAYNE, MRS. MYRTLE R. WHITE, J. T. DUNCAN,
CHARLES R. COV, F. P. GRESSETT, J. B. SHELTON, JOSE-
PHINE S. CHAMBERS, S. B. STREET, J. W. SIMPSON and
A. G. HYDER, as Petitioners

and

CHARLES L. BRADFORD, HAZEL E. COBB, R. O. COOK, J. H.
DAVIS, R. N. DURVIN, MRS. ELIZABETH FERGUSON, T. P.
FERGUSON, MRS. EDNA G. FRITSCHER, D. E. HUMPHRIES,
MISS N. M. LOOPER, C. H. MILLER, WILLIAM H. TREN-
THAM, A. G. WARD, JR., MARY INEZ WILLIAMS, MRS. M. S.
WALKER, THOMAS E. BROWN and ROBERT D. YOUNG, AS
Intervenors

—VS.—

GEORGIA SOUTHERN AND FLORIDA RAILWAY COMPANY; SOUTH-
ERN RAILWAY COMPANY; CINCINNATI, NEW ORLEANS AND
TEXAS PACIFIC RAILWAY; ALABAMA GREAT SOUTHERN
RAILROAD COMPANY; NEW ORLEANS AND NORTHWESTERN
RAILROAD COMPANY; CAROLINA AND NORTHWESTERN RAIL-
WAY COMPANY; NEW ORLEANS TERMINAL COMPANY; ST.
JOHNS RIVER TERMINAL COMPANY; HARRIMAN AND NORTH-
EASTERN RAILROAD COMPANY; EASTERN RAILROAD COM-
PANY; INTERNATIONAL ASSOCIATION OF MACHINISTS; IN-
[fol. 52]

TERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP
BUILDERS AND HELPERS OF AMERICA; INTERNATIONAL
BROTHERHOOD OF BLACKSMITHS, DROP FORGERS AND HELP-
ERS; SHEET METAL WORKERS INTERNATIONAL ASSOCIA-
TION; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORK-
ERS; BROTHERHOOD OF RAILWAY CARMEN OF AMERICA;
INTERNATIONAL BROTHERHOOD OF FIREMEN, OILERS, HELP-
ERS, ROUNDHOUSE AND RAILWAY SHOP LABORERS; BROTHER-
HOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYEES; BROTHER-
HOOD OF MAINTENANCE OF WAY EMPLOYEES; ORDER OF
RAILROAD TELEGRAPHERS; BROTHERHOOD OF RAILROAD
SIGNALMEN OF AMERICA; NATIONAL ORGANIZATION MAS-
TERS, MATES AND PILOTS; NATIONAL MARINE ENGINEERS
BENEFICIAL ASSOCIATION; AMERICAN TRAIN DISPATCHERS
ASSOCIATION; and RAILROAD YARDMASTERS OF AMERICA

SECOND AMENDMENT TO PETITION—Filed June 27, 1953

Now come the petitioners in the above-stated case, in their own behalf, and in behalf of others similarly situated, [fol. 53] heretofore allowed to intervene or who may be hereafter allowed to intervene, and amend the petition heretofore filed in the following manner, to-wit,

1.

Petitioners allege that the labor organizations named as defendants in the petition in paragraphs 10 through 24 inclusive are voluntary and unincorporated associations, having memberships so numerous to make it impossible to serve each individual member. These defendant associations heretofore referred to have not conformed with Section 22-412 through 22-414 of the Georgia Code, and are not subject to be sued as an entity. All officers and members of each defendant association hereinbefore referred to are parties interested in and affected by this action. The entire membership of the defendant associations is unknown to petitioners, impossible of ascertainment, and the members of these organizations are so numerous as to make it impossible and impracticable to serve each member, and this could not be done without interminable delay, and the ends of justice would be defeated if petitioners should be required to serve each individual member of various associations named herein as defendants.

2.

Petitioners allege that the defendant labor associations were represented by certain officials and agents in the execution of the contract complained of, these agents and representatives of each labor association named as defendants herein represented the entire membership of each [fol. 54] organization, acting for and representing each and every member of said associations in the execution of the contract complained of by petitioners.

3.

Petitioners allege that the officers and agents of each individual labor association named as a defendant undertook

to act and represent each and every member of said association who might be in any way interested in or affected by the execution of the aforesaid contract, and petitioners allege that the agents and officials so representing the various labor organizations are subject to be made parties and served as representatives of said organizations as provided by Section 37-1002 of the Georgia Code, which provides for the naming and serving of class representatives in such case.

4.

Petitioners allege that a large number of the agents and members of the organizations named as defendants in paragraphs 10 through 24 inclusive are non-residents of the State of Georgia, and petitioners pray that the persons named in this amendment as representatives of the various labor organizations be made defendants individually and/or as representatives of the organizations for whom they acted in making the contract complained of, and petitioners pray that they do be named such representatives and that service be made upon the defendant organizations by serving these representatives, and petitioners further pray that an order be made by the court authorizing service by publication upon the non-resident persons named in this amendment.

[fol. 55]

5.

Petitioners amend paragraph 10 by designating the representatives of the defendant organization named in this paragraph upon whom service is to be made to represent the organization, naming as representatives the following:

(a) Earl Melton, General Vice President, whose only known address is 1704 Second Ave., West Birmingham 8, Alabama.

(b) L.C. Ritter, General Chairman, whose only known address is Somerset, Kentucky (Box 102).

6.

Petitioners amend paragraph 11 by naming and adding the following persons individually and as representatives of the organization named in this paragraph,

(a) Charles J. MacGowan, International President, whose only known address is

(b) Norman Dugger, General Chairman, whose only known address is 218 Central Avenue South, Louisville, Kentucky.

7.

Petitioners amend paragraph 12 by adding the following representatives who acted for and in behalf of this organization in executing the contract complained of and the following persons as defendants individually and as representatives of said organization:

(a) John Pelkafer, General President, whose only known address is

(b) T.B. Steadman, General Chairman, whose only known address is 158 Cleveland Park Dr., Spartanburg, S.C.

[fol. 56]

8.

Petitioners amend paragraph 13 by adding the following:

That in making the contract complained of, this defendant organization was represented by certain agents and officials named and petitioners pray that these persons named defendants individually and/or as representatives of the organization named as defendant, the persons designated as representatives of said defendant be as follows:

(a) C.D. Bruns, General Vice President, whose only known address is

(b) W.G. Roberts, General Chairman, whose only known address is 904 Capitol Avenue S.E., Atlanta, Georgia.

9.

Petitioners amend paragraph 14 by adding thereto the following:

That said association named in this paragraph as defendant was represented in the execution of the contract by certain named officials, and petitioners pray that these named persons be made defendants individually and/or as representatives of said organization, the persons named as representatives being as follows:

(a) J.J. Duffy, International Vice President, whose only known address is

(b) R.R. Acuff, General Chairman, whose only known address is Rt. 11, Fountain City Branch, Knoxville 18, Tenn.

10.

Petitioners amend paragraph 15 of the petition by adding thereto the following:

[fol. 57] That the defendant named in this paragraph in the execution of the contract complained of was represented by certain named officials of this organization, and petitioners pray that the following named persons individually and as representatives of said organization be named defendants, the persons designated as representatives of this organization being as follows:

(a) Irvin Barney, General President, whose only known address is

(b) W.W. Dyke, General Chairman, whose only known address is 1122 Minnesota Avenue Northwest, Knoxville, Tenn.

11.

Petitioners amend paragraph 16 by adding thereto the following:

The defendant organization named in this paragraph in the execution of the contract complained of was represented

by certain named officials, acting for and on behalf of said organization, and petitioners pray that the following persons individually and/or as representatives of said defendant organization be named and served as representatives, said representatives being as follows:

(a) Anthony Matz, President, whose only known address is

(b) J.H. Desotell, General Chairman, whose only known address is 1812 Second Ave. North, Irondelet 10, A

12.

Petitioners amend paragraph 17 by adding the following:

[fol. 58] This defendant organization in the execution of the contract complained of was represented by certain officials of this organization, and petitioners pray that the following named persons be designated defendants individually and/or as representatives of this defendant organization, the persons designated as representatives being as follows:

(a) George M. Harrison, Grand President, whose only known address is

(b) G.A. Link, General Chairman, whose only known address is 1208 Independence Building, Charlotte 2,

13.

Petitioners amend paragraph 18 by adding the following:

That the organization named as defendant in the execution of this contract complained of was represented by certain officials, and petitioners pray that these individuals be made defendants individually and/or as representatives of said organization, the persons designated as defendants and as representatives of said organization being as follows:

(a) J.P. Alexander, General Chairman, whose only known address is 206 Williams St. Hattiesburg, Mississippi

(b) G.W. Ball, General Chairman, whose only known address is 125 Ash Street, Ludlow, Kentucky.

14.

Petitioners amend paragraph 19 by adding thereto following:

[fol. 59] That the defendant named in this paragraph the execution of the contract complained of was represented by certain named officials, and petitioners pray that the named officials be named defendant individually and/or representatives of said defendant organization, the persons named as representatives of this organization being follows:

(a) F.G. Gardner, General Chairman, whose only known address is P.O. Box 2, Emory Gap, Tennessee.

(b) H.R. Duensing, General Chairman, whose only known address is St. Matthews, South Carolina.

15.

Petitioners amend paragraph 20 by adding thereto following:

That said organization in the execution of the contract complained of was represented by certain named officials and petitioners pray that these named individuals be named defendants individually and/or as representatives of said organization, the individuals named as representatives being as follows:

(a) Jesse Clark, Grand President, whose only known address is

(b) E.C. Melton, General Chairman, whose only known address is 1704 Second Avenue West, Birmingham 8, Ala.

16.

Petitioners amend paragraph 21 by alleging that organization named as defendant in this paragraph in execution of the contract complained of was represented

by certain named officials, and petitioners pray [fol. 60] named persons be named defendants in and/or as representatives of the organization the persons named as representatives being:

(a) B.T. Hurst, General Chairman, whose address is 601 Portlock Building, Norfolk, Virginia

(b) John M. Bishop, Secretary-Treasurer, whose known address is 1420 New York Ave., N.W., Washington, D.C.

17.

Petitioners amend paragraph 22 by adding following:

The defendant organization named in this paragraph in the execution of the contract complained of was represented by certain named officials, and petitioners pray that named individuals be made parties defendant in and/or as representatives of the defendant organization the individuals named as representatives of said organization being:

(a) W.L. Ball, General Chairman, whose only address is 602 Portlock Building, Norfolk, Virginia

(b) William O. Holmes, Secretary-Treasurer, whose known address is 132 Third St. S.E., Washington

18.

Petitioners amend paragraph 23 by adding following:

That the defendant organization named in paragraph 22, in the execution of the contract complained of, was represented by certain named officials, and petitioners pray that these named individuals be made parties defendant individually and/or as representatives of the defendant organization, the persons named as representatives being:

[fol. 61] (a) O. H. Brasese, President, whose address is

(b) R. M. Crawford, General Chairman, whose known address is 2102 East Elm St., New Albany, Indiana.

19.

Petitioners amend paragraph 24 by adding thereto following:

That the organization named as defendant in this paragraph in the execution of the contract complained of represented by certain officials of said organization, petitioners pray that these named individuals be named as defendants individually and/or as representatives of said defendant organization, the individuals named as representatives being:

(a) M. G. Schoch, President, whose only known address is

(b) H. E. Ivey, General Chairman, whose only known address is 1458 Carroll Dr., N.W., Atlanta, Ga.

20.

Petitioners allege that the parties named as one of these various defendant labor organizations, who for said organizations in the execution of the contract complained of, represented all members of the various associations, each of whom had a common interest in the contract and are interested in and may be affected by the action, and petitioners allege that it being impossible to serve each member of these various organizations that it is necessary that the individuals named representatives [fol. 62] members of their various associations and that it is necessary that a representative be served and designated defendant to represent all members of each organization so represented by the individuals named in this petition as representatives of each organization.

21.

Petitioners allege that it is necessary in this case to serve the defendants and their representatives by publication, and petitioners pray that an order of this

be made directing and providing that service be perfected by publication in the manner prescribed by the laws of this State.

Wherefore, Petitioners pray that this be allowed and ordered filed as part of the relief petitioners have the relief prayed and that the petitioners be designated and named defendants and that service be perfected by publication, and that the petitioners have all other and further relief prayed in the

T. Arnold Jacobs, Attorney for Petitioners

Duly sworn to by J. M. Payne, jurat omitted

[fol. 63] The foregoing amendment being filed with the court, after consideration thereof, the court has by allowed and ordered filed as part of the relief petitioners to the right of defendants to demur or object on legal grounds.

It appearing to the court that the said defendants are as labor organizations, and the individual petitioners individually and/or as class representatives of the organizations are non-residents of the state of Georgia, that service upon these non-resident defendants be perfected by publication in accordance with Section 37-1002 of the Supplement of the Code of Georgia.

Further ordered that the non-resident defendants herein, individually and/or as class representatives of their respective organizations, show cause before the court in sixty days of the date of this order why they should not be made defendants, individually and/or as class representatives of their respective organizations, as prescribed by Section 37-1002 of the Code of Georgia. Ordered that defendants show cause why the relief prayed in the petition should not be granted.

Ordered further that process be published in the manner prescribed by the laws of this State within the ensuing sixty days, said publication to be made directing and providing that service be perfected by publication in the manner prescribed by the laws of this State.

service do be per-
rescribed by the

s amendment be
record and that
that representa-
ts as prayed and
that petitioners
in this amendment.

petitioners.

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ng duly presented
the same is here-
the record, subject
object thereto on.

defendants named
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of said organiza-
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defendants named
representatives of their
fore the court with-
why they should not
or as class repre-
zations, as is pre-
of Georgia. Further
the relief prayed

ublished four times
publication to be at

least seven days apart as prescribed by Section
of the Georgia Code.

And It Is So Ordered, this June 27th, 1953.

Mallory C. Atkinson, J.

*Filed in Office 27 day of June, 1953.

Lillian Lavine, Dep. Clerk.

[fol. 64]

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA

MACON DIVISION
Civil Action No. 1044

J. M. PAYNE, MRS. MYRTLE R. WHITE, J. T.
CHARLES R. COX, F. P. GRESSETT, J. B. SHEP-
PHINE S. CHAMBERS, S. B. STREET, J. W. S.
A. G. RYDER, Plaintiffs,

—v.—

GEORGIA SOUTHERN AND FLORIDA RAILWAY COMPAN-
ERN RAILWAY COMPANY, CINCINNATI, NEW O
TEXAS PACIFIC RAILWAY, ALABAMA GREAT
RAILROAD COMPANY, NEW ORLEANS AND NO
RAILROAD COMPANY, CAROLINA AND NORTHWE
WAY COMPANY, NEW ORLEANS TERMINAL CO
JOHNS RIVER TERMINAL COMPANY, HARRIMAN
EASTERN RAILROAD COMPANY, INTERNATIONAL
OF MACHINISTS, INTERNATIONAL BROTHERHOOD
MAKERS, IRON SHIP BUILDERS AND HELPERS
INTERNATIONAL BROTHERHOOD OF BLACKSM
FORGERS AND HELPERS, SHEET METAL WOR
NATIONAL ASSOCIATION, INTERNATIONAL B
OF ELECTRICAL WORKERS, BROTHERHOOD OF R
MEN OF AMERICA, INTERNATIONAL BROTHERH
MEN, OILERS, HELPERS, ROUNDHOUSE AND RA

[fol. 65]

LABORERS, BROTHERHOOD OF RAILWAY AND
CLERKS, FREIGHT HANDLERS, EXPRESS AND S

PLOYEES, BROTHERHOOD OF MAINTENANCE
 PLOYEES, ORDER OF RAILROAD TELEGRAPHERS
 OF RAILROAD SIGNALMEN OF AMERICA, NA-
 TION MASTERS, MATES AND PILOTS, NATION-
 GINEERS BENEFICIAL ASSOCIATION, AMER-
 PATCHERS ASSOCIATION AND RAILROAD
 AMERICA, Defendants.

PETITION FOR REMOVAL OF ACTION FROM
 SUPERIOR COURT, BIBB COUNTY, GEORGIA

To the Honorable the United States District
 Middle District of Georgia, Macon Division

Your petitioners, the undersigned defendants in the
 above-entitled action, respectfully show:

1. That there are no defendants to the
 your petitioners and the Southern Railway
 Companies, namely, the Georgia Southern and
 Way Company, Southern Railway Company,
 New Orleans and Texas Pacific Railway,
 Southern Railroad Company, New Orleans
 ern Railroad Company, Carolina and Nor-
 way Company, New Orleans Terminal Com-
 River Terminal Company and Harriman
 Railroad Company. All of said named
 united in ownership and management and
 collectively referred to as the Southern
 Lines. Although nominally named as de-
 the nine named companies members of the
 way System Lines have, for the reasons
 [fol. 66] forth in paragraph 6 hereof, the
 the controversy presented that are subst-
 with those of the plaintiffs. Your petition-
 ers substitute all the defendants to the said action
 the additional nominal defendants are no
 ties to the petition. Your petitioners a-
 international railway labor organizations
 thorized and designated representatives of
 of the nine named companies members of the

CE OF WAY EM-
ERS, BROTHERHOOD
TIONAL ORGANIZA-
ONAL MARINE EN-
RICAN TRAIN DIS-
YARDMASTERS OF

FROM THE
GEORGIA

riect Court for the
Division;

defendants in the

this action except
lway System com-
and Florida Rail-
company, Cincinnati,
ay, Alabama Great
ans and Northeast-
Northwestern Rail-
Company, St. Johns
n and Northeastern
ned companies are
and are hereinafter
rn Railway System
s defendants all of
the Southern Rail-
sons specifically set
of, real interests in
substantially aligned
ioners therefore con-
tion in substance and
e not necessary par-
rs are national and
ons and are duly au-
ves of the employees
of the Southern Rail-

way System Lines of their respective crafts and
pursuant to Section 2 of the Railway Labor Act
Title 45, Section 152).

2. That this action has been commenced against
petitioners in a court of the State of Georgia, na-
Superior Court, Bibb County, by the plaintiffs
named, that this action is of a civil nature, being
wherein the plaintiffs ask the court to enjoin the
defendants from performing or enforcing or attempt-
to enforce the terms and provisions of a union shop
agreement entered into on February 27, 1953, between
petitioners and eight of the nominal defendants,
the named companies members of the Southern
System Lines except the Carolina and Northwest-
ern Railroad Company, a copy of which agreement is a
part of the complaint as Exhibit A, and for other further
relief. The Carolina and Northwestern Railroad
Company entered into a substantially similar agreement
on February 1, 1953 with four of the petitioner labor organizations,
namely, Brotherhood of Railway and Steamship
Employees, Freight Handlers, Express and Station Employ-
ees, Brotherhood of Maintenance of Way Employees, The
Railroad Telegraphers and American Train Dispatchers
Association.

3. Your petitioners further state that, as
[fol. 67] appears from the specific facts set forth in
paragraph 6 hereof, the amount in dispute in this action is
the sum of Three Thousand Dollars (\$3,000), plus
interest and costs; that this is an action of a civil
nature, of which the District Courts of the United States
have original jurisdiction, and arises under the
Constitution and laws of the United States; that as appears
from the plaintiffs' complaint herein, a copy of which, together
with all other process, pleadings and orders served upon the
defendants, is hereto attached, the plaintiffs base their
claim for relief against the defendants upon the
Constitution and statutes of the United States; more specifically,
paragraphs 51, 52 and 53 of said complaint claim that the
above described union shop agreement entered into on
February 27, 1953, violates the Fifth

teenth Amendments to the Constitution of the United States in that it deprives the plaintiffs of liberty and property without due process of law; and further, said union shop agreement was in fact, as is shown from the reference in Section 10 thereof to Emergency Board No. 98, and in Section 11 thereof to the Railway Labor Act, as amended, and made and entered into pursuant to the recommendations of Emergency Board No. 98 appointed by the President of the United States and pursuant to the provisions of Section 2, Eleventh of the Railway Labor Act, as amended by the Act of January 10, 1951 (64 Stat. 1238; U.S.C. title 45, Section 152, Eleventh) providing that

"Notwithstanding any other provision of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this Act and a labor organization [fol. 68] or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—"

to make such agreements as that between your petitioners and the Southern Railway System Lines, and the performance and enforcement of which the plaintiffs seek by this action to enjoin, and all rights which the plaintiffs assert are wholly dependent upon the invalidity of said Act of Congress under the Constitution of the United States or its ineffectiveness to carry out its stated purposes; insofar as plaintiffs predicate any rights upon the laws of the State of Georgia such rights are wholly dependent upon the invalidity of said Act of Congress under the Constitution of the United States and the inability of Congress to make effective its stated purpose to permit, notwithstanding the provisions of any statute or law of any state, the making of such agreements as that the performance or enforcement of which the plaintiffs seek to enjoin.

4. Your petitioners further state that this action is of a civil nature, of which the District Courts of the United States have original jurisdiction, in that it arises under an Act of Congress regulating commerce and regulating com-

merce between the states, namely, the aforesaid Railway Labor Act.

5. Your petitioners further allege that the action was commenced by the service of process upon petitioners on the 10th day of June, 1953, and that the time has not elapsed within which they are allowed to file this petition for removal of action to this Court.

6. Your petitioners further state that the real interests of each and all of the nominal defendants, the nine railway companies members of the Southern Railway System [fol. 69] Lines, are aligned with those of the plaintiffs by virtue of the following facts: Pursuant to the provisions of the Railway Labor Act the duly authorized and designated representatives under that Act of seventeen classes and crafts of non-operating railway employees, on February 5, 1951, served a uniform notice upon the railroads generally throughout the United States, including each of the nine railway companies members of the Southern Railway System Lines named as nominal defendants herein, proposing the making of union shop and check off agreements drawn substantially in the language of Section 2, Eleventh of the Railway Labor Act permitting such agreements; the dispute arising from this proposal remained unsettled on a preponderant proportion of the railways throughout the country, including the aforesaid nine nominal defendants, on November 15, 1951, and the President of the United States thereupon on that date appointed Emergency Board No. 98 pursuant to Section 10 of the Railway Labor Act (U.S.C. Title 45, Section 160) to investigate the dispute and to report thereon to him. The aforesaid nominal defendants, among other carriers, appeared before said Emergency Board, urging said Board to recommend against the making of any union shop agreements, taking a position substantially identical to that taken by the plaintiffs in this action. On February 14, 1952, Emergency Board No. 98 made its report to the President recommending that all carrier parties before it enter into a joint national agreement with the seventeen organizations represented through their Employees' National Conference Committee providing for a union shop

and check off of dues substantially along the lines proposed by the employee organizations, with certain recommended modifications. The employee organizations, through the Employees' National Conference Committee, notified the President and the representatives of the carriers of the acceptance of the recommendations of the Emergency Board [fol. 70] and called upon the carrier representatives to join with them in carrying out those recommendations. The carrier representatives refused to do so and in consequence no joint national agreement has been made. However, the great majority of the carriers throughout the country, exceeding 250 in number, have made agreements individually with the Employees' National Conference Committee substantially on the terms recommended by the Emergency Board. The aforesaid nominal defendants, however, until February 27, 1953, and the Carolina Northwestern Railroad Company until April 1, 1953, flatly refused to make any such agreement, and failed to enter into agreements on those dates with great reluctance. After 90 to 95% of the railroad mileage throughout the country was already covered by union shop agreements, and then only through fear that their continued refusal to enter into such agreements might result in an interruption of their operations. The interest and desire of the nominal defendants in being relieved of the terms of their agreements with your petitioners would be completely served by the granting of the relief prayed for by the plaintiffs. On May 19, 1953, one day after the commencement of an action in the Superior Court of Guilford County, North Carolina, by G. D. Atwell, an employee of the defendant Southern Railway Company, against said company and your petitioners, seeking to enjoin enforcement of the same union shop agreement of February 27, 1953, as is involved in the present action, upon substantially the same basis as relief is sought in this suit, the President of the defendant Southern Railway Company explained to its stockholders that the said union shop agreement had been made reluctantly and out of necessity, after many years of strenuous resistance, after resisting to the end and only after having painstakingly explored all alternative possibilities and only after having been advised

the only action with any possibility of success would have [fol. 71] to be a legal action initiated by individual employees to test the legality of the agreement; and he referred to the aforementioned suit by Atwell as constituting such an action. He further stated that the defendant Southern Railway Company had always believed that the union shop was wrong in principle and still does. Upon the removal of the aforementioned suit by Atwell to the United States District Court for the Middle District of North Carolina, Greensboro Division, where it was docketed as Civil Action No. 754, the defendant Southern Railway Company filed an answer wherein it recites the history of its opposition to the union shop, beginning with its activities in appearing before committees of Congress and vigorously opposing legalization of the union shop, its refusal after the adoption of the union shop amendment to the Railway Labor Act to accede to demands of the petitioners for such agreements, its opposition before Emergency Board No. 98, and its final signing of such a agreement on February 27, 1953 in order to avoid a long and costly strike despite the fact that the defendant Southern Railway Company then believed and still believes that such agreements are "unsound and improper and are subject to question as to their validity and legality." The aforesaid nominal defendants have further shown by their refusal to join in this petition that their purpose in this action is not to defend the validity of the agreement but to give such assistance as they can to the support of the plaintiffs' cause.

7: Your petitioners further state that the amount in dispute in this action exceeds the sum of Three Thousand Dollars (\$3,000), exclusive of interests and costs by virtue [fol. 72] of the following facts: Each of the plaintiffs has rights of employment and seniority rights of a value greatly in excess of Three Thousand Dollars (\$3,000) which would be lost to him or her should he or she persist in his or her refusal to join or maintain membership in one of the petitioning labor organizations as plaintiffs allege will be the result if the injunctive relief prayed in this action is not granted. Each of the petitioning labor

organizations is by virtue of the union shop agreement here involved, assured the collection of dues greater in excess of Three Thousand Dollars (\$3,000) which would be lost to it should the agreements be held invalid and unenforceable.

8. Your petitioners file herewith a good and sufficient bond under the statutes in such cases made and provided, conditioned as the law directs, and that they will pay the payment of all costs and disbursements incurred by the removal of these removal proceedings, if this Court shall determine that this action was not removable or was improperly removed thereto.

Wherefore, the defendants, your petitioners, pray that this cause be removed to this, the United States District Court for the Middle District of Georgia, Macon Division.

International Association of Machinists; International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America; International Brotherhood of Blacksmiths, Drop Forgers and Helpers; Sheet Metal Workers International Association; International Brotherhood of Electrical Workers; [fol. 73] Brotherhood of Railway and Shipmen of America; International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Way Shop Laborers; Brotherhood of Railway Steamship Clerks, Freight Handlers, Express and Station Employees; Brotherhood of Maintenance of Way Employees; Order of Railroad Telegraphers; Brotherhood of Railroad Signalmen of America; National Organization of Masters, Mates and Pilots; National Marine Engineers Beneficial Association; American Train Dispatchers Association; Railroad Yardmasters of America. Walter J. Grace, 301 Persons Building, Macon, Georgia; Lester P. Schoene, Milton Kramer Schoene and Kramer, 1625 K Street, N.W., Washington 6, D. C., Clarence M. Mulholland, Ed J. Hickey, Jr., Mulholland, Robie & Hickey, Tenth Building, Washington 5, D. C., Attorneys for Petitioners.

[fol. 85]

IN THE SUPERIOR COURT OF BIBB COUNTY

STATE OF GEORGIA

Civil Division

No. 16537

J. M. PAYNE, et al., Plaintiffs,

—v.—

GEORGIA SOUTHERN AND FLORIDA RAILWAY COMPANY,
et al., Defendants.

ANSWER OF RAILROAD DEFENDANTS—Filed June 29, 1953

Now come the defendants Georgia Southern and Florida Railway Company, Southern Railway Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, The Alabama Great Southern Railroad Company, New Orleans and Northeastern Railroad Company, Carolina and Northwestern Railway Company, The New Orleans Terminal Company, St. Johns River Terminal Company, and Harriman and Northeastern Railroad Company, hereinafter sometimes called railroad defendants, and by way of answer to plaintiffs' petition say:

I.

Railroad defendants admit the allegations of Paragraphs 1 to 9, inclusive, of the petition except that they say The [fol. 86] Cincinnati, New Orleans and Texas Pacific Railway Company does not operate in the State of Georgia, and the railroad defendants other than Georgia Southern and Florida Railway Company and Southern Railway Company, do not have an office and agent in the State of Georgia.

II.

Railroad defendants admit the allegations of Paragraphs 10 to 20, inclusive, of the petition.

III.

Railroad defendants are without knowledge and information sufficient to form a belief as to the allegations of paragraphs 21 and 22 of the petition.

IV.

Railroad defendants admit the allegations of paragraphs 23 to 33, inclusive, of the petition except that J. W. Simpson referred to in paragraph 32 is an "employee" rather than a "member" of St. Johns River National Company, and the seniority of J. B. Shelton commencing February 5, 1925, the seniority of Josephine S. Hyder dates from November 22, 1920, and the seniority of J. S. Hyder dates from January 15, 1924.

V.

Railroad defendants admit the allegations of paragraphs 34 and 35 of the petition except that they say that employees are subject to discharge only if they do not comply with the requirements of the "Union Shop Agreement" attached to the petition as Exhibit "A", or of the "Agreement" attached hereto as Exhibit "1" insofar as it applies to St. Johns River & Northwestern Railway Company employees concerned.

VI.

Railroad defendants are without knowledge and information sufficient to form a belief as to the allegations of paragraph 36 of the petition.

VII.

By way of answer to paragraph 37 of the petition, railroad defendants say that such of petitioners as do not comply with the requirements of the said Union Shop Agreements will be subject to discharge if the said Agreements are enforced.

VIII.

Railroad defendants admit the allegations of paragraphs 38 to 40, inclusive, to the petition.

IX.

Railroad defendants admit the allegations of paragraph 41 of the petition, except that defendant Carolina and Northwestern Railway Company did not sign the agreement of February 27, 1953, attached to the petition Exhibit "A", but did sign a similar agreement on April 15, 1953, effective April 15, 1953. This agreement is substantially the same as the agreement of February 27, 1953, signed by the other railroad defendants except that coverage is limited to certain crafts represented only by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Brotherhood of Maintenance of Way Employees, Order of Railroad Telegraphers, and American Train Dispatchers Association. A copy of the agreement made by the defendant Carolina and Northwestern Railway Company marked Exhibit "1", is attached hereto and made a part hereof, if fully and completely set forth herein.

X.

Railroad defendants admit the allegations of Paragraph [fol. 88] 42 of the petition with respect to both Union Shop Agreements.

XI.

Railroad defendants admit the allegations of paragraph 43 with respect to both Union Shop Agreements, but further say that the provisions of Section 10 of the said agreements have not been made effective as provided in paragraph (b) of said Section 10.

XII.

Railroad defendants admit the allegations of paragraph 44 of the petition.

XIII.

Railroad defendants are advised that paragraphs 45 to inclusive, of the petition consist of allegations or conclusions of law which they are not required to answer.

XIV.

By way of answer to paragraph 57 of the petition, railroad defendants deny that petitioners are not in compliance with the said Union Shop Agreement, as alleged in paragraph (a) thereof, and further say that the agreement was made on their behalf by the several defendant labor organizations as their duly authorized representatives pursuant to the provisions of the Railway Labor Act, U. S. C. § 151 *et seq.* Railroad defendants further state that they are without knowledge or information to disprove or form a belief as to the allegations that petitioners were given an opportunity to be heard or voice their dissent or disapproval of such a agreement insofar as the defendant labor organizations are concerned, but they deny the allegations as to the respective employing railroad defendants. Railroad defendants are advised that item [fol. 89] of the petition which respects paragraph 57 consists of allegations and conclusions of law which they are not required to answer.

XV.

Railroad defendants are advised that paragraphs 58, 59, and 60, inclusive, of the petition consist of allegations and conclusions of law which they are not required to answer.

XVI.

Further answering plaintiffs' petition herein, railroad defendants say:

1. The Railway Labor Act, 45 U.S.C. § 152, Fifth, prior to the amendment thereto herein mentioned, specifically forbade agreements by carriers which would require employees as a condition of employment to join or not to join a labor organization. In 1937, Congress a bill was introduced to amend the Railway Labor Act to permit such agreements pertaining to union membership. Representatives of railroad defendants and other carriers appeared before committees of the Senate and vigorously opposed the passage of such a bill. It was then being advocated by representatives of the defendant unions herein. On January 10, 1951, ne

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railroad defen-
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Paragraphs 58 to
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ed to answer.

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Railway Labor
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1, nevertheless,

Congress passed a bill which amended the Railway Act so as to permit carriers and labor organization designated and authorized to represent employees, to agreements requiring, as a condition of continued employment, that all employees shall become members of a organization representing their class or craft and to agreements providing for the deduction by such carriers from the wages of employees in a craft or class an amount to the labor organizations representing the class or craft of such employees, of any periodic dues, initiation fees and assessments (not including fines and penalties) [fol. 90] uniformly required as a condition of acquiring and retaining membership. A copy of such amendment is set forth in Paragraph Eleventh in Section 2 of the Railway Labor Act (45 U. S. C. § 152, Par. Eleventh) is annexed hereto and marked Exhibit "2". This amendment by its terms makes it permissive for carriers and labor organizations to execute agreements providing for the union shop, collection by the carrier under the conditions therein set forth of union dues, fees and assessments from its employees, and requiring, as a penalty for failure of such employees to become a member of the union and to pay or tender such dues, fees and assessments to the union, dismissal by the employer of such employee, "notwithstanding any provision of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State or Territory."

2. Upon the amendment of the Railway Labor Act providing for the execution of union shop and check-off agreements as aforesaid, many carriers and labor organizations have given notice and demand so to amend their respective agreements to include provisions requiring the same to be served upon railroad defendants by the defendant union herein. Concurrent demand similarly made by such unions upon a large number of railroads resulted in a refusal on the part of railroad defendants and other carriers to consent so to amend their agreements. Thereupon, full negotiations and proceedings in mediation before the National Mediation Board having failed to dispose of the controversy, the President of the United States appointed an Emergency Board to hear and report upon the controversy. Railroad defendants appeared before said Board.

and earnestly opposed any finding that it sh any such union shop and check-off agreeemendations of the Emergency Board dated [fol. 91] 1952, substantially supported the mand with respect to said union shop and cments. Thereafter many of the railroads i duress of economic force, as railroad de reason to believe, executed such an agreee

3. On February 25, 1953, and on dates su to, demand was again made upon railro (other than Carolina and Northwestern Rail by the defendant unions that a union shop agreement in exact form as annexed to pla as Exhibit "A" and without change of an or portion thereof be immediately execute road defendants and put into effect, and unless same was done, strike of employees cessation of operations of the said defer would result and be made effective. Said roads, having been advised that a majority and Western railway carriers and a num operating in the Southeast, including carri pete with said defendant railroads, had e proposed, union shop and check-off agreee defendant unions, decided as a practical necessary to execute the agreement in orde then appeared to be a probable long an which would be extremely damaging to railroads and to the interests of the public. ing the fact that the railroad defendants and still do believe, that the principles er union shop agreement are unsound and im subject to question as to their validity an road defendants (other than Carolina & Nor way Company) finally yielded and executed [fol. 92] shop agreement on February 27 quent thereto, defendant Carolina and Nor way Company likewise received a demand union shop agreement in substantially th had been executed by the other defendant

should enter into
ment. The recom-
ted February 14,
the employee de-
d check-off agree-
s involved, under
defendants have
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subsequent there-
road defendants
railway Company)
shop and check-off
plaintiffs' petition
any work, clause
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entered into the
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rder to avoid what
and costly strike,
to said defendant
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nts then believed,
embodied in said
improper and are
and legality, rail-
Northwestern Rail-
uted the said union
27, 1953. Subse-
Northwestern Rail-
and that it sign a
the same form as
nt railroads herein.

Accordingly, in due course defendant Carolina and
western Railway Company met with the repres-
of the labor unions and, for the same reasons ar-
the same conditions outlined above with respect
other railroad defendants herein, executed on
1952 the agreement attached hereto as Exhibit "1"

4. Having executed the aforesaid agreements,
defendants felt obliged to honor the terms and pro-
thereof and undertook to perform the agree-
required. However, upon receiving service of
the Temporary Restraining Order issued by the S-
Court of Bibb County, State of Georgia, dated
1953, railroad defendants have taken steps fully to
with the restraints provided therein and will con-
do so as long as the order is outstanding.

5. Railroad defendants further aver that not
there an actual controversy between the plainti-
defendants over the validity and application of uni-
agreements in this case, but there are also cases
in the courts of other States and of the United
involving like controversies over the validity and
cation of similar or the same union shop agree-
by railroad employers with the defendant unions

Wherefore, the premises considered railroad def-
do not contest but will faithfully obey, the Ten-
Restraining Order heretofore issued by this Ho-
[fol. 93] Court, and consent to the issuance by this
able Court of a temporary injunction as prayed by
tiffs pending the disposition of this cause of action
merits, and railroad defendants further pray:

1. That the Court grant its declaratory judgment
the validity of the union shop agreements, attac-
Exhibit "A" to the plaintiffs' petition and Exhibit
this answer, under the Constitution, statutes and
the State of Georgia and of the United States, and
it declare the respective rights, status and other
relations of the parties to said agreements defe-
herein;

2. And that railroad defendants be
herein and given such other and furt
may be entitled to in law or in equity.

Harris Russell Weaver & Watkin
Block Hall Groover & Hawkin
Attorneys for Railroad Defens

Of Counsel: W. S. Macgill, Box 1808

[fol. 94]

IN THE SUPERIOR COURT OF BI

STATE OF GEORGIA

Civil Division

No. 16537

J. M. PAYNE, et al., Plain

—V.—

GEORGIA SOUTHERN AND FLORIDA RAIL
et al., Defendants.

AFFIDAVIT

Now comes Fred A. Burroughs, who
deposes and says that he is Assistant
Southern Railway Company and affiliat
parties to the Union Shop Agreemen
1953, that he personally participated in
of the negotiations and handling which
ecution of the Union Shop Agreemen
defendants in this case all as set for
of said railroad defendants, a copy of
hereto and made a part hereof as if
set out herein, and that the facts set fo
are true of his own knowledge and b
matters therein set forth on informati
as to those matters, he believes it to b

e allowed their costs
further relief as they

ins, Macon, Georgia,
ins, Macon, Georgia,
endants.

08, Washington, D.C.

BIBB COUNTY

aintiffs,

RAILWAY COMPANY,

S.

who being duly sworn,
ant Vice President of
liated lines which are
ment of February 27,
d in or has knowledge
which led up to the ex-
ments by the railroad
forth in the Answer
of which is attached
if fully and in detail
t forth in said answer
d belief, except as to
nation and belief, and
to be true.

This affidavit is made for the purpose of use
terlocutory hearings in this cause.

Fred A. Bur

[fol. 95] Sworn and subscribed to before me this
25th day of June, 1953.

P. K. Howard (N.P. Seal)

Notary Public

My Commission expires May 1, 1955.

[Exhibit 1 is identical to the agreement apper
Record Pages 367 to 370] (omitted in printing)

[Exhibit 2 is a copy of "Public Law 914—81st C
Chapter 1220—2d Session, S.3295," which is no
graph Eleventh in Section 2 of the Railway La
(45 U.S.C. §152, Par. Eleventh)] (omitted in pri

[File endorsement omitted]

[fol. 96]

[File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STA

FOR THE MIDDLE DISTRICT OF GEORGIA

MACON DIVISION

Civil Action No. 1044

J. M. PAYNE, et al., Plaintiffs,

—v.—

GEORGIA SOUTHERN AND FLORIDA RAILWAY COMP
et al., Defendants.

MOTION TO REMAND BY RAILROAD DEFENDANTS
Filed July 2, 1953

Now come the defendants Georgia Southern and
Railway Company, Southern Railway Company, T
cinnati, New Orleans and Texas Pacific Railwa

pany, The Alabama Great Southern Railroad Company, New Orleans and Northeastern Railroad Company, Carolina and Northwestern Railway Company, The New Orleans Terminal Company, St. Johns River Terminal Company, and Harriman and Northeastern Railroad Company, hereinafter sometimes called railroad defendants, and, pursuant to their right so to do, given by Title 28, U.S.C. §1447, move this court to remand this [fol. 97] cause to the Superior Court of Bibb County, State of Georgia, from which it was removed improvidently and without jurisdiction for the following reasons:

1. The defendants in this cause have not all joined in the petition for removal, in that the railroad defendants necessary parties to said petition for removal, did not join therein. The said railroad defendants deny that they are nominal defendants and aligned with the plaintiffs, but say that they are necessary and indispensable parties defendant to the cause of action stated in plaintiffs' petition (hereinafter referred to as bill of complaint) with interests fundamentally different from and adverse to plaintiffs in that they have advised their employees, including plaintiffs, that they will enforce the Union Shop Agreements which defendants have executed, unless restrained from doing so by court of competent jurisdiction, or the said contracts are otherwise declared invalid and unenforceable.

2. The bill of complaint does not show that there is a "separate and independent claim or cause of action" against the defendant petitioners which would be removable if sued upon alone.

3. This is not a controversy between citizens of different states and petitioning defendants have not attempted to remove this case on the grounds of diversity of citizenship.

4. This court is without jurisdiction of the subject matter of this cause since the Norris-La Guardia Act (Act of March 23, 1932; c. 90, Sec. 1, 47 Stat. 70, 29 U.S.C. §§101-115) and other federal statutes deprive this Court

of jurisdiction to hear and determine the merits of this [fol. 98] cause, or to grant the relief sought by the bill of complaint filed in this cause, but such jurisdiction is expressly denied to this Court.

5. The Superior Court of Bibb County, State of Georgia; has power to grant the full, adequate and complete relief sought in the bill of complaint, whereas this court is without power and authority to grant the full, adequate and complete relief sought by plaintiffs.

6. In support of the foregoing motion the railroad defendants hereby refer to the affidavit hereto attached and made a part hereof, and the allegations of the answer of the railroad defendants verified by Fred A. Burroughs, Assistant Vice President of Southern Railway Company, which has been filed in this Court.

Wherefore, railroad defendants pray that this Court remand this case to the Superior Court of Bibb County, State of Georgia, and that a certified copy of its order of remand be mailed by the Clerk of this court to the Clerk of said State Court in order that said State Court may proceed with this case.

Charles J. Bloch, Ellsworth Hall, Jr., Macon,
Georgia, Walter A. Harris, H. D. Russell, Macon,
Georgia, Attorneys for Railroad Defendants.

Of Counsel, W. S. Macgill, Box 1808, Washington, D. C.,
Harris, Russell, Weaver & Watkins; Bloch, Hall, Groover
& Hawkins.

[fol. 99]

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE MIDDLE DISTRICT OF GEORGIA

MACON DIVISION

Civil Action No. 1044

J. M. PAYNE, et al., Plaintiffs,

—v.—

GEORGIA SOUTHERN AND FLORIDA RAILWAY COMPANY,
et al., Defendants.

AFFIDAVIT

City of Washington
District of Columbia, ss

W. S. MACGILL, being duly sworn, deposes and says:

1. That he is General Attorney of the defendant Georgia Southern and Florida Railway Company, Southern Railway Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, The Alabama Great Southern Railroad Company, New Orleans and North eastern Railroad Company, Carolina and Northwestern Railway Company, The New Orleans Terminal Company, St. Johns River Terminal Company, and Harriman and Northeastern Railroad Company, hereinafter called railroad defendants.

2. That to the best of his information, knowledge and belief, the interests of the railroad defendants, in this action are not such as to constitute them nominal defendants [fol. 100] or to permit their alignment with the plaintiffs for the purpose of ascertaining whether all necessary parties have joined in the petition for removal.

3. That he has read the above and foregoing motion to remand, and that the same is true and correct.

W. S. Macgill

Subscribed and sworn to before me by W. S. Macgill this 30th day of June, 1953.

Hobart R. House, Notary Public, My Commission
Expires Nov. 15, 1956.

(N.P. Seal)

Filed in office 3 day of Feb. 1959

Lillian Lavine, Deputy Clerk, Superior Court of Bibb
County

[fol. 101]

[File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE MIDDLE DISTRICT OF GEORGIA

MACON DIVISION

Civil Action No. 1044

J. M. PAYNE, et al., Plaintiffs,

and

CHARLES L. BRADFORD, et al., Intervenor,

vs.

INTERNATIONAL ASSOCIATION OF MACHINISTS: INTERNATIONAL
BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS AND
HELPERS OF AMERICA: INTERNATIONAL BROTHERHOOD OF
BLACKSMITHS, DROP FORGERS AND HELPERS: SHEET METAL
WORKERS INTERNATIONAL ASSOCIATION: INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS: BROTHERHOOD OF
RAILWAY CARMEN OF AMERICA: INTERNATIONAL BROTHER-

[fol. 102]

HOOD OF FIREMEN, OILERS, HELPERS, ROUNDHOUSE
RAILWAY SHOP LABORERS: BROTHERHOOD OF RAILWAY
STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS
STATION EMPLOYEES: BROTHERHOOD OF MAINTENANCE
WAY EMPLOYEES: ORDER OF RAILROAD TELEGRAPH
BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
TIONAL ORGANIZATION MASTERS, MATES AND PILOTS
TIONAL MARINE ENGINEERS BENEFICIAL ASSOCIATION
AMERICAN TRAIN DISPATCHERS ASSOCIATION: and
ROAD YARDMASTERS OF AMERICA and GEORGIA SOUTHERN
FLORIDA RAILWAY COMPANY, et al., Defendants.

MOTION TO REMAND BY ORIGINAL PETITIONERS—FILED
July 10, 1953

Now come the original petitioners in their behalf in behalf of others allowed to intervene by the court pursuant to their right so to do given by Title 28 Section 1447, move this court to remand this cause to the Superior Court of Bibb County, State of Georgia, which it was removed improvidently and without jurisdiction for the following reasons:

[fol. 103]

1.

The defendants in this cause have not all joined in the petition for removal, in that the railroad defendant necessary parties to said petition for removal, did not join therein. Petitioners deny that the railroad defendants are nominal defendants and aligned with petitioners, but that they are necessary and indispensable parties to the cause of action stated in plaintiffs' petition (hereinafter referred to as Bill of Complaint) with interests fundamentally different and adverse to plaintiffs, that the railroad defendants have advised their employees, including plaintiffs, that they will enforce the union agreement, which defendants have executed, unless restrained from doing so by a court of competent jurisdiction, or the said contracts are otherwise declared invalid and unenforceable.

2.

The Bill of Complaint, while a civil action, is not one of which the District Courts have original jurisdiction and is not founded on a claim or right arising under the Constitution, treaties, or laws of the United States.

3.

The Bill of Complaint does not show there is a separate and independent claim or cause of action against the defendant petitioners which would be removable if sued upon alone. The complaint seeks to enjoin and invalidate a contract entered into between the railway company defendants and the labor organization defendants, and petitioners allege that it is absolutely necessary to make all contracting parties defendants in this action to authorize the relief sought by them.

[fol. 104]

4.

The complaint is not a controversy between citizens of different states, and petitioning defendants have not attempted to remove this case on the ground of diversity of citizenship.

5.

This court is without jurisdiction of the subject matter of this cause since the Norris-LaGuardia Act (Act of March 23, 1932; 29 USC, Section 101-115) and other Federal statutes deprive this court of jurisdiction to hear and determine the merits of this cause, or to grant the relief sought by the Bill of Complaint filed in this cause, but such jurisdiction is expressly denied to this court.

6.

The Superior Court of Bibb County, State of Georgia has power to grant the full, adequate, and complete relief sought in the Bill of Complaint, whereas this court is without power and authority to grant the full, adequate, and complete relief sought by the plaintiffs.

The Bill of Complaint filed in this case under to declare void a certain contract made by the railway company defendants and the labor organization and the complaint is not one arising under the Constitution or laws of the United States, and while it may be to give effect to certain provisions of the United States Constitution and the Constitution of the State of Georgia, the Superior Court of Bibb County, Georgia, has the power and authority and jurisdiction of this cause and the petition to remove filed by the labor organization [fol. 105] is wholly insufficient and does not set forth grounds for removal recognized under the statutes of the United States.

Wherefore, Petitioners pray that this court remove this case to the Superior Court of Bibb County, Georgia, and that a certified copy of its order be mailed by the Clerk of this Court to the Clerk of the State Court in order that the State Court may proceed with this case.

T. Arnold Jacobs, Attorney for

Duly sworn to by J. M. Payne, jurat omitted.

[fol. 106] Certificates of Service (omitted in

Filed in office 3 day of Feb., 1959

Lillian Lavine, Deputy Clerk, Superior Court of Bibb County.

[fol. 107]

[File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE MIDDLE DISTRICT OF GEORGIA

MACON DIVISION

Civil Action No. 1044

J. M. PAYNE, et al, Plaintiffs,

and

CHARLES L. BRADFORD, et al., Intervenor

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS: INTERNATIONAL
BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS
HELPERS OF AMERICA: INTERNATIONAL BROTHERHOOD OF
BLACKSMITHS, DROP FORGERS AND HELPERS: SHIPYARD
WORKERS INTERNATIONAL ASSOCIATION: INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS: BROTHERHOOD OF
RAILWAY CARMEN OF AMERICA: INTERNATIONAL BROTHERHOOD
OF FIREMEN, OILERS, HELPERS, ROUND HOUSE MEN
RAILWAY SHOP LABORERS: BROTHERHOOD OF RAILROAD
STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESSMEN
STATION EMPLOYEES: BROTHERHOOD OF MAINTENANCE
WAY EMPLOYEES: ORDER OF RAILROAD TELEPHONE
BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
NATIONAL ORGANIZATION MASTERS, MATES AND BOATS

[fol. 108]

ATIONAL MARINE ENGINEERS BENEFICIAL ASSOCIATION
AMERICAN TRAIN DISPATCHERS ASSOCIATION
YARDMASTERS OF AMERICA and GEORGIA SOUTHERN
FLORIDA RAILWAY COMPANY, et al., Defendants

MOTION TO REMAND BY INTERVENING PLAINTIFFS

July 10, 1953

Come now Charles L. Bradford, Hazel E. Cook, J. H. Davis, R. N. Durvin, Mrs. Elizabeth

T. P. Ferguson, Mrs. Edna G. Fritschel, Miss N. M. Looper, C. H. Miller, William A. G. Ward, Jr., Mary Inez Williams, Mr. Thomas E. Brown, and Robert D. Young, the above proceeding, and, pursuant to 1447, move this court to remand this p. Superior Court of Bibb County, Georgia, as it was removed from said court improvidently, jurisdiction for the following reasons:

1.

Both the so-called railroad defendants and labor organization defendants are indisputably defendant in this proceeding. The court cannot grant full relief to plaintiffs unless an injunction can be issued by the court. This is so as to the parties to the contract, the enforcement of which they seek to enjoin. Furthermore, petitioners are the so-called railroad defendants, and one of the reliefs sought by petitioners is an injunction against the discharge of petitioners by the so-called railroad defendants. Obviously, therefore, the so-called [fol. 109] defendants are not mere nominal parties and cannot be realigned as parties plaintiff.

However, the so-called railroad defendants, joined in the petition for removal filed by the labor organization defendants, and, therefore, the proceeding ought to be remanded to the state court.

2.

This proceeding is not otherwise proper in this court on the basis of a separate and independent cause of action of which this court would have jurisdiction. The petition set forth a cause of action which is removable on grounds of diversity of citizenship and is a legal question.

3.

The state court has power to grant full and complete relief as sought by plaintiffs, but this court does not have such power and authority.

D. E. Humphries,
Sam H. Trentham,
Mrs. M. S. Walker,
ng, Intervenor in
Title 28 U.S.C.A.
proceeding to the
on the ground that
dently and without

s and the so-called
ispensable parties
t could not accord
on binding on both
because both are
of which plaintiffs
s are employees of
n important aspect
injunction against
ed railroad defend-
ed railroad defend-
l defendants, and

endants have not
d by the so-called
erefore, this pro-
ate court.

properly removed to
independent cause
re jurisdiction, nor
action properly re-
izenship or federal

full, adequate and
but this court does

Wherefore, intervening plaintiffs named above
court to remand this cause to the Superior Court
County, Georgia.

Gambrell, Harlan, Barwick, Russell &
Smythe Gambrell, W. Glen Harlan,
Moye, Jr., Attorneys for Intervenor.

[fol. 110] CERTIFICATE OF SERVICE (omitted in
Filed in Office 3 day of Feb. 1959.

Lillian Lavine, Deputy Clerk, Superior Court
County.

[fol. 111] [File endorsement omitted]

IN THE UNITED STATES COURT
FOR THE MIDDLE DISTRICT OF GEORGIA

MACON DIVISION

[Title omitted]

ORDER REMANDING CAUSE TO STATE COURT—JANUARY

This cause having heretofore been removed to
from the Superior Court of Bibb County, Georgia,
petition of the Union Defendants to remove the

Motions to remand the same having been filed by
Railroad defendants and by Charles L. Bradford
Intervenor, and

It being made to appear that the Union Defendants
consent to the granting of the several motions to
all of which motions to remand are now pending
not been withdrawn;

It Is Ordered, that said motions to remand the
same are hereby granted, and that this cause be
to the Superior Court of Bibb County, Georgia

It Is Further Ordered that the cost of removal and remand be paid by the United States. The petitioner brought the original petition for removal.

Dated January 7, 1957.

[fol. 112] T. Hoyt Davis, United States District Judge.

We hereby consent to the above order for David L. Mincey, 321 Cotton Avenue, Lester P. Schoene and Milton Kramer, Washington 6, D.C., Counsel of Record and Respondents.

I, John P. Cowart, Clerk of the Court, do hereby certify that the above and foregoing is a true and correct copy of the original petition and record in my office, at Macon, Georgia. This 7 day of January, 1957.

United States District Court Seal

John P. Cowart

Filed in Office, 8 day of January, 1957.

Lillian Lavine, Deputy Clerk, Superior Court, Macon County.

[fol. 113]

IN THE SUPERIOR COURT OF BIRMINGHAM

J. M. PAYNE, et al., Petitioners
C. L. BRADFORD, et al., Intervenor

vs.

GEORGIA SOUTHERN AND FLORIDA RY. CO.

THIRD AMENDMENT TO PETITION—Filed

Now come the plaintiffs in the above captioned case, the petition heretofore filed (as amended) and the Court having been first had and ob

costs of this court on
Union Defendants who
removal to this court.

United States District

ler: David L. Mincey
nue, Macon, Georgia;
r, 1625 K Street NW,
ord for Union Defen-

rk, do hereby certify
going is a true and
rinal now on file and
acon, Georgia.

John P. Cowart, Clerk.

57.

rior Court of Bibb

BIBB COUNTY

tioners,
ervisors,

o., et al., Defendants.

iled June 29, 1957

ve action and amend
(ed) as follows, leave
obtained:

I.

Plaintiffs amend the petition by adding a
59a to read as follows:

59a. The labor organization defendant
authority, express or implied or by o
to negotiate and to enter into, on beh
or other employees of defendant rail
shop agreement which is the basis of th

II.

Plaintiffs amend the petition by adding a
59b to read as follows:

59b. The initiation fees, periodic du
ments which plaintiffs would be require
the terms of the union shop agreement
ferred to will be used in substantial pa
not germane to collective bargaining
[fol. 114] ideological and political doct
didates which plaintiffs are not willing
cannot lawfully be forced to support,
plaintiffs' constitutionally guaranteed
dom of association, thought, liberty and

III.

Plaintiffs amend the petition by deleting
and inserting a new paragraph 51 to read as

51. Petitioners allege that Sec. 2 Eleven
way Labor Act (45 U.S.C.A. Sec. 152 Ele
extent that it authorizes the union shop ag
tofore referred to, and said agreement, an
the First, Fifth and Ninth Amendments
stitution of the United States of Amer
therefore invalid.

Wherefore plaintiffs pray that this amendme
and ordered filed.

Charles A. Moye, Attorney f

[fol. 115]

Order

The foregoing amendment read and considered, verification having been waived, and the same is hereby allowed and ordered filed, subject to objection.

O. L. Long, Judge, Bibb Superior Court.

[File endorsement omitted]

[fol. 116]

IN THE SUPERIOR COURT OF BIBB COUNTY

[Title omitted]

SUPERSEDEAS ORDER—Filed March 4, 1957

Nancy M. Looper and others, plaintiffs in the above-styled cause, having tendered a Bill of Exceptions which has been allowed and signed;

Therefore, pending further order of this Court, the defendants, and each of them, their agents, servants, employees and representatives are hereby restrained and enjoined from enforcing, or attempting to enforce the terms and provisions of the contract (Exhibit "A") attached to the original complaint in this case, and from aiding or procuring or causing to be done any acts which any of them might do in the furtherance of attempting to enforce the provisions of this contract, insofar as said contract relates to the discharge or termination of the employment of any of the petitioners in error, who may file a bond as specified hereinbelow, for any cause or reason set out in the contract.

The defendants and each of them are restrained and enjoined pending further order of this court from discharging any petitioner in error, for the sole reason that he or she does not have or maintain a membership in any of the labor organizations named as defendants in error.

This order shall be effective only as to the following [fol. 117] named persons: Nancy M. Looper, Mrs. Elizabeth Ferguson, Mrs. Edna G. Fritschell, Mrs. Myrtle R. White,

J. T. Duncan, Charles R. Cox, F. P. Gressett, J. B. Shelton, Josephine S. Chambers, S. B. Street, J. W. Simpson and A. G. Hyder, and only on the filing by each individual to be covered by this order of a bond in the amount of \$66.00 payable to defendants, the condition of the bond being that said petitioners in error shall respond to defendants for any damage which said defendants may sustain by reason of the issuance of this Supersedeas Order.

This 4 day of March, 1957.

Oscar L. Long, Judge, Superior Court, Bibb County.

[File endorsement omitted]

[fol. 118]

IN THE SUPERIOR COURT OF BIBB COUNTY

[Title omitted]

ANSWER OF DEFENDANTS OTHER THAN
RAILWAY COMPANY DEFENDANTS

Come now the defendants other than the railway company defendants, and for answer to the petition, the 14-paragraph amendments of June 1953 to the petition, the 21-paragraph amendments of June 1953, the petition of Bradford et al. to intervene; and the amendments to the petition by the intervenors filed January 29, 1957, says:

I.

Answer to Original Petition

1-9. They admit the allegations of the first nine paragraphs. They allege that each of the railroads referred to in said paragraphs is a carrier by railroad engaged in interstate commerce and is subject to the Interstate Commerce Act, and is a "carrier" as that term is defined in the Railway Labor Act.

10-24. The names of the organizations referred to in paragraph 10 through 24 are in some instances inaccurately set forth but are sufficiently close to accuracy to identify them. These defendants admit that each of said

organizations is a labor organization, and deny the re [fol. 119] maining allegations of said paragraphs.

These defendants allege that each of said organizations is a standard railway labor organization organized in accordance with the provisions of the Railway Labor Act and is duly designated and authorized to represent employees in accordance with the requirements of the Railway Labor Act, and is the duly designated and authorized representative pursuant to that Act of the employees of the defendant railroads of its respective craft or class.

25-33. They are without knowledge or information sufficient to form a belief concerning the allegations of paragraphs 25 through 33, and therefore deny them.

34-35. They deny the allegations of paragraphs 34 and 35.

36. They are without knowledge or information sufficient to form a belief concerning the allegations of paragraph 36, and therefore deny them.

37-38. They deny the allegations of paragraphs 37 and 38.

39. They are without knowledge or information sufficient to form a belief concerning the allegations of paragraph 39, and therefore deny them.

40. They admit that some of the original petitioners are residents of the State of Georgia. The remainder of paragraph 40 consists of conclusions of law not requiring answer; insofar as it may be construed to contain allegations of fact, they are denied.

41-42. They admit the allegations of paragraphs 41 and 42. They allege that the Union Shop Agreement was executed after more than two years of negotiations and other proceedings in accordance with the Railway Labor Act, and that the terms of said Agreement are identical (except for the date and the names of the parties) with the union shop agreements made with these defendants during [fol. 120] said period by hundreds of railroads throughout all parts of the United States, including the Union Pacific Railroad and practically every other major railroad in the country.

43-44. They deny the allegations of paragraphs 43 and 44.

45-59. Paragraphs 45 through 59 consist of conclusions of law not requiring answer; insofar as they may be construed to contain allegations of fact, they are denied.

60. Paragraph 60 consists of prophesy and conclusions of law not requiring answer; insofar as it may be construed to contain allegations of fact, they are denied.

II.

Answer to Petition to Intervene

1-2. These defendants are without knowledge or information sufficient to form a belief concerning the allegations of the first two paragraphs, and therefore deny them.

3. They deny the allegations of paragraph 3.

4. Paragraph 4 consists of conclusions of law not requiring answer; insofar as it may be construed to contain allegations of fact, they are denied.

III.

Answer to 21-Paragraph Amendments of June 1953

1. They admit that the organizations referred to in paragraph 10 through 24 of the original petition are voluntary associations, that all but one are unincorporated and that their memberships are so numerous as to make it impracticable to serve each member. They deny the remaining allegations of paragraph 1 of this group of amendments.

2. They admit that the defendant labor organizations were represented by officials and agents in executing the Union Shop Agreement, and deny the remaining allegations of paragraph 2.

[fol. 121] 3. They deny the allegations of paragraph 3.

4. Paragraph 4 consists of a prayer for relief; insofar as it may be construed to contain allegations of fact, they are denied.

5-19. Insofar as paragraphs 5 through 19 allege that the defendant labor organizations were represented by officials or agents in executing the Union Shop Agreement, such allegation is admitted. These defendants do not understand paragraphs 5 through 19 to contain other allegations of fact; insofar as they may be construed to contain other allegations of fact, they are denied.

20-21. Insofar as paragraphs 20 and 21 may be construed to contain allegations of fact, they are denied.

IV.

Answer to 14-Paragraph Amendments of June 1957

1. Paragraph 1 consists of conclusions of law not requiring answer; insofar as it may be construed to contain allegations of fact, they are denied.

2-14. They deny the allegations of paragraph through 14.

V.

Answer to Amendments of January 1957

1. Paragraph 1 consists of conclusions of law not requiring answer; insofar as it may be construed to contain allegations of fact, they are denied.

2. They deny the allegations of paragraph 2.

3. Paragraph 3 consists of conclusions of law not requiring answer; insofar as it may be construed to contain allegations of fact, they are denied.

VI.

They deny any other allegations not heretofore admitted.

[fol. 122] Wherefore, having fully answered, they pray that the petition be dismissed, with costs assessed against petitioners.

David L. Mincey, 321 Cotton Avenue, Macon, Georgia; Milton Kramer, Schoene and Kramer, 1625 K Street, N. W., Washington 6, D. C., Counsel for defendants other than railway company defendants.

[fol. 125]

IN THE SUPERIOR COURT OF BIBB COUNTY, GEORGIA

[Title omitted]

ORDER—May 8, 1958

And now, to wit, this 8th day of May, A.D., 1958, at a pretrial conference in my chambers, having heard and maturely considered the arguments of all parties with respect to the production and examination of books, records, papers and documents and testimony with respect thereto, in order to expedite the preparation for trial and the trial of this cause, it is considered, ordered and adjudged that:

The named labor organization defendants, to wit, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; Brotherhood of Railway Carmen of America; Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees; International Brotherhood of Electrical Workers; International Brotherhood of Firemen and Oilers, Helpers, Roundhouse & Railway Shop Laborers; International Association of Machinists; Brotherhood of Maintenance of Way Employees; National Marine Engineers' Beneficial Association; International Organization of Master, Mates and Pilots; Sheet Metal Workers International Association; Brotherhood of Railroad Signalmen of America; Order of Railroad Telegraphers; American Train Dispatchers Association; and Railroad Yardmasters of America, and each of them, are hereby

Ordered to produce before me in my chambers in Bibb Superior Courthouse, Macon, Georgia, on the 9th day of July, 1958, together with an officer or agent of such defendant competent and prepared to testify fully under oath with respect to the identity, nature, contents, accuracy, source, and purpose thereof, the following, related to the period from June 15, 1953 to date:

Any and all books, records, papers, documents, books of original entry, check books, ledgers, vouchers, corre-

spondence files, minutes, diaries, memoranda, printed materials, brochures, in the custody, possession or control of each such defendant and its agents, or related to monies paid by the members to each of the respective organizations or affiliates thereof and the purposes for which monies received by each of the respective organizations were or are being expended, including and all monies paid by each of the respective organizations to other organizations or individuals and the purposes for which such payments are being, or were made, or to be made, to the political or legislative activities conducted on behalf of said defendant.

It is Further Ordered that any of said defendants in lieu of the production and testimony in Macon, Georgia, may elect to have its production and testimony with reference thereto take place at the principal office of such defendant and before a duly qualified commissioner of this Court at a time agreeable to counsel for all parties, not later than June 30, 1958.

So ordered this 8th day of May, 1958.

O. L. Long, Judge, Superior Court, Macon
Circuit.

[File endorsement omitted]

[fol. 127]

IN THE SUPERIOR COURT OF BIBB COUNTY, GEORGIA

[Title omitted]

PETITION OF DEFENDANT LABOR UNIONS FOR ORDER
PENDING THIS COURT'S ORDER OF MAY 9, 1958 RE
THE PRODUCTION OF THEIR BOOKS AND RECORDS
THE SUSPENSION OF THE TAKING OF TESTIMONY BY
WITNESSES ON THE MERITS UNTIL THESE DEFENDANTS
OBTAIN A JUDGMENT OF RES JUDICATA CAN BE INQUIRED INTO—Filed
May 30, 1958

Come now the Defendant Labor Unions in said captioned case and respectfully show to the Court:

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agents, showing
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TY, GEORGIA

OR ORDER SUS-
1958 REQUIRING
RECORDS AND FOR
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FENDANTS' PLEA
TO—Filed May

n said case and

1.

On May 9, 1958 this Court issued an order requiring these defendants to produce all of their books and records of every kind showing the monies paid to them by membership and showing the purposes for which all monies are spent beginning with June 15, 1953 down to date and to have such books and records before the Court in Chambers in Macon, Georgia on July 9, 1958 along with proper official of each of such unions who will be examined on oath by plaintiffs before a Commissioner of this Court and who can testify with respect to such records and explain them. Said order provides that these defendants may, however, elect to produce such records and call witnesses to explain them before the Commissioner of this Court at the principal offices of such unions in their respective cities where such offices are located at a time agreeable to counsel for all parties, not later than July 30, 1958.

2.

Subsequent to said order of May 9, 1958, these defendants along with all defendants other than the railway [fol. 128] company defendants filed in this Court their plea of res judicata on May 22, 1958 which plea will be exhibited to the Court upon presentation of this petition.

3.

These defendants have endeavored to comply thus with the production of their records with an officer to testify about them, one of the defendant unions have already had its records so examined pursuant to said May 9th order; they have likewise cooperated in the taking of depositions by plaintiffs inquiring into the merits of the case, all at great expense and inconvenience.

4.

Said plea of res judicata was not before the Court when its May 9, 1958 order was passed because final judgment was not rendered against plaintiffs until May 15, 1958 as will appear from said plea.

5.

The production of such books and records pursuant to this Court's order of May 9, 1958, and the attending the taking of testimony on the merits of the case would require in effect that these defendants be sent to a second trial of the same issues as were decided against the same plaintiffs all as shown in said res judicata.

6.

These defendants will be put to unnecessary trial at great expense and their operations will be greatly disrupted if they are required to comply further with the May 9th order and are required to take testimony. Plaintiffs are allowed to take further testimony on the merits of this case.

[fol. 129]

7.

Plaintiffs have set up and are proposing to take testimony and require production of books and records from five different states and the District of Columbia. This undertaking involves necessarily great sums of money on both sides and particularly by these defendants. In effect amounts to a trial, at least in part, of the same case as was decided against these same plaintiffs in the North Carolina case as set out in the plea of res judicata. All the work and the trouble involved and the expense of money will go for naught if the plea of res judicata is sustained.

8.

The time and money and the disruption of the operations of these defendants by further inquiry into the merits of this case in the face of this plea of res judicata is so large that the ends of justice require this court to make an early inquiry into the matter and pass upon it by suspending further re-trial of these same issues until in said North Carolina case until such time as the plea of res judicata can be heard and passed upon.

Wherefore, these defendants pray that this court suspend its said order of May 9, 1958 and have such heard and require such showing as are needful and proper in connection with the proposed order of suspension and further that this court pass an order suspending further discovery efforts by Plaintiffs on the merits of the case by way of depositions and otherwise until said plea of res judicata is determined.

[fol. 130] Schoene & Kramer, 1625 K Street, N.W.
Washington 6, D.C.

David L. Mincey, Attorneys for Petitioning Defendants.

Duly sworn to by David L. Mincey, jurat omitted printing.

[File endorsement omitted]

[fol. 131]

IN THE SUPERIOR COURT OF BIBB COUNTY, GEORGIA

[Title omitted]

ORDER—May 30, 1958

This cause coming regularly to be heard on May 30, 1958, before me, the presiding judge, in the Superior Court of Bibb County, Georgia, upon a petition of the defendant labor union defendants for an order suspending this Court's order of May 9, 1958 requiring the production of certain books and records and for the suspension of the taking of testimony by the plaintiffs in any manner with respect to the merits of the cause until the labor union defendants' plea of res judicata can be considered, and after hearing full and complete argument of counsel and having maturely considered the aforesaid petition; and

The Court being of the opinion that no new facts or matters are shown in the petition which were not fully argued and considered at the time the order of this Court was entered on May 9, 1958, treating the petition as a request for rehearing, reargument and reconsideration of

this Court's order of May 9, 1958 or for su and for suspension of the taking of testimony, tiffs,

It Is Ordered That the petition so far a hearing, reargument and reconsideration order of May 9, 1958 or the suspension. suspension of the taking of testimony by it is hereby denied;

[fol. 132] It Is Further Ordered that t petition requests hearing on the labor u plea of res judicata, a hearing with resp is hereby set before me commencing at Tuesday, July 1, 1958, subject to the right to demur, object or otherwise respond with

Let the petition and this order be filed, tiffs right to demur, object or otherwise and copies of the petition and order be parties.

So ordered this 30th day of May, 1958.

O. L. Long, Judge, Superior Courts
Circuit.

Certificate

I hereby certify that I have this day the foregoing order to be served upon the all counsel of record, by mailing a copy prepaid to each of the following persons:

Mr. David L. Mincey, 321 Cotton
Georgia;

Mr. Milton Kramer, Schoene & R
Street, NW, Washington, D.C.;

Mr. Charles J. Bloch, Bloch, Hall, C
kins, First National Bank Building

Mr. John B. Harris, Jr., Harris, J
& Watkins, Persons Building, Ma

This 30th day of May, 1958.

Terry P. McKenna, Of Counsel for

[File endorsement omitted]

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Kramer, 1625 K

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Russell, Weaver
Macon, Georgia

or Plaintiffs.

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[fol. 133]

IN THE SUPERIOR COURT OF BIBB COUNTY, GA

[Title omitted]

FOURTH AMENDMENT TO PETITION—Filed Sept.

Now come the plaintiffs, and with leave of C
had and obtained, amend their petition, as l
amended on June 25, 1953, June 27, 1953 and Ja
1957, as follows:

I.

Plaintiffs amend their original petition by ins
lieu of the preamble the following:

"The petition of Nancy M. Looper, S. B. Stre
E. Cobb, J. H. Davis, Mrs. Edna G. Fritschel
Elizabeth Ferguson respectfully shows . . ."

II.

Plaintiffs amend said petition by deleting parag
[fol. 134] through 30 thereof and inserting in lieu
new paragraphs 25-30, reading as follows:

"25.

"Petitioner Nancy M. Looper is an employee of
fendant Southern Railway Company, having been
ously in the employ of said Company from Au
1947. Plaintiff Looper has been employed in p
covered by the union shop agreement at all tim
the effective date of that agreement. Plaintiff
resided and worked in Atlanta, Georgia, at the co
ment of this action, but currently resides and w
Washington, D. C. Plaintiff Looper is not now a
before the commencement of this litigation has n
a member of any of the labor union defendants, he
having been protected by order of the trial cour
the posting of a supersedeas bond. Unless injunctiv
is granted plaintiff Looper will be discharged fr
employment by the defendant railroad company
compelled as a condition of continued employment

one of the defendant labor organization dues, fees and assessments which will candidates for public office opposed to oppose candidates favored by plaintiff support political and economic ideologies of plaintiff and for other purposes not collective bargaining and to which plaintiff and objects.

"26

"Petitioner Hazel E. Cobb is an employee of defendant Southern Railway Company, has been continuously in the employ of said company since 1928. She has been employed in position of union shop agreement at all times since [fol. 135] of that agreement. At the commencement of this litigation, she resided and worked in Atlanta, Georgia, and has continued to reside and work there since that time.

"Under the terms of the union shop agreement, Cobb was required as a condition of continued employment, against her wishes and over her objection, to join the defendant Brotherhood of Locomotive Steamship Clerks, Freight Handlers, Express and Employes and pay an initiation fee and dues. At that date she has been likewise required to continue employment to pay dues at the rate of \$1.00 through the month of June, 1958, and \$1.25 for each month thereafter. The said plaintiff has been required as a condition of continued employment to pay under said agreement the sum of \$161.25 to the date of the filing of this amended petition.

"27.

"Petitioner J. H. Davis is an employee of defendant Southern Railway Company, having been continuously in the employ of said Company since November 1, 1940. At the commencement of this litigation he resided in Decatur, Georgia, and worked in Atlanta, Georgia, and has continued to reside in Decatur, Georgia, and work in Atlanta, Georgia.

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agreement, plaintiff
f continued employ-
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Express and Station
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at \$2.25 per month
d dues of \$3.00 per
e total amount which
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ee of the Southern
uously in the employ
1919. At the com-
in Decatur, Georgia
s continued to reside
anta, Georgia, up to

the present time. Plaintiff Davis has been em-
positions covered by the union shop agreement a-
since the effective date of that agreement.
[fol. 136] "Under the terms of the union shop a-
plaintiff David was required as a condition of
employment, against his wishes and over his pr-
March, 1957, to join the defendant Brotherhood
way and Steamship Clerks, Freight Handlers,
and Station Employees and to pay a reinstatement
back dues in the amount of \$96.00, and has been
as a condition of continued employment to pay
\$2.25 per month since that time to the month
1958, and monthly dues of \$3.00 since June, 19-
aggregate total of sums which plaintiff Davis
required as a condition of continued employme-
the union shop agreement to pay to said defend-
date of the filing of this amendment is \$136.50.

"28.

"Petitioner Mrs. Edna G. Fritschel is an emp-
the defendant Southern Railway Company, havin-
continuously in the employ of said Company since
20, 1943. At the commencement of this litigat-
resided and worked in Atlanta, Georgia, and has c-
to reside and work there up to the present time.
Fritschel is not now and since before the commence-
this litigation has not been a member of any of t-
union defendants, her status having been prote-
order of the trial court upon the posting of a, supe-
bond.

"29.

"Petitioner Mrs. Elizabeth Ferguson is an empl-
the defendant Southern Railway Company, havin-
[fol. 137] continuously in the employ of said C-
since June 14, 1943. Plaintiff Ferguson was empl-
a position covered by the union shop agreement a-
been continuously employed in such position at al-
since the effective date of this agreement. She ha-
times during said employment lived and worked

City of Atlanta, Georgia. Plaintiff Ferguson is not and since before the commencement of this litigation has not been a member of any of the labor union defendants, her status having been protected by order of the trial court upon the posting of a supersedeas bond. Unless the injunctive relief requested herein is granted, plaintiff Ferguson will be discharged from her employment by the railroad defendant, or else compelled as a condition of continued employment to join one of the defendant labor organizations and pay to it dues, fees and assessments which will be used to support candidates for public office opposed by plaintiff Ferguson, to oppose candidates favored by plaintiff Ferguson, and to support political and economic ideologies opposed by plaintiff Ferguson and for other purposes not germane to collective bargaining and to which plaintiff Ferguson is opposed and objects.

"30.

Petitioner S. B. Street is an employee of the defendant New Orleans and Northeastern Railroad Company, with seniority rights dating from November 3, 1917. Plaintiff Street at all times since the execution of the union shop agreement has been employed by said railroad defendant in positions covered by said agreement, his present assignment [fol. 138] ment being that of General Clerk. Plaintiff Street lives and works in the city of Hattiesburg, Mississippi.

"Under the terms of the union shop agreement, plaintiff Street was required as a condition of continued employment against his wishes and over his protests, in April 1957, to join the defendant Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and to pay to that organization a reinstatement fee and back dues. He has been required as a condition of continued employment since that date to pay to such organization \$2.25 per month to June, 1958, and \$3.00 per month since June, 1958. The total amount which plaintiff Street has been required to pay under the union shop agreement as a condition of continued employment aggregates \$154.50, as of the date of the filing of this amendment."

II.

Petitioners further amend their petition by deleting paragraphs 31-33 thereof and inserting in lieu thereof new paragraphs 31-33 to read as follows:

"31.

"Petitioners show that the dues, fees and assessments which they are will be required to pay under the terms of the union shop agreement are and will be used in substantial part by the labor union defendants to support financially candidates for public office whom petitioners and the class they represent do not wish to support, and to oppose candidates favored by petitioners and the class they represent."

[fol. 139]

"32.

"Petitioners show that the dues, fees and assessments which they are and will be required to pay under the union shop agreement will be used in substantial part to propagate political and economic ideologies espoused by the labor organization defendants, but which are repugnant to the petitioners and the class they represent,

"Petitioners show that the dues, fees and assessments which they are and will be required to pay under the terms of the union shop agreement are and will be used in substantial part by the labor union defendants in attempts to convert plaintiffs and the class they represent to the political and economic ideologies espoused by the small group of individuals controlling the policies of the labor union defendants, although those ideologies are repugnant to petitioners and the class they represent.

"Similarly, those, dues, fees and assessments are and will be used, in substantial part, to attempt to induce plaintiffs and the class they represent to vote for and otherwise support candidates favored by that small group of individuals controlling the policies of the labor union defendants but whom plaintiffs and the class they represent do not wish to vote for or support.

"Petitioners show that the dues, fees and assessments which they are and will be required to pay under the union

shop agreement are and will be used in substantial part to finance and otherwise maintain large, active and expensive political organizations working vigorously to support candidates, principles, doctrines and ideologies repugnant to petitioners and the class they represent and to oppose candidates and principles favored by petitioners and the class they represent.

"Petitioners show that their dues, fees and assessments are and will be used in substantial part to disseminate through printed and oral propaganda media political and economic views, opposed by petitioners, in an effort to convert to those views members of the general public including railroad employees and employees of other businesses."

33.

"Petitioners show that the activities hereinabove referred to in the two preceding paragraphs are not germane to collective bargaining activities of the labor union defendants, are not reasonably incident thereto, and are not necessary thereto. Said activities are not reasonably incident to the duties of said labor union defendants as statutory bargaining agents under the Railway Labor Act and to the extent that the union shop agreement was executed or purported to be executed pursuant to the Railway Labor Act and was and is used by said labor union defendants as a device by which the property of the petitioners and the class they represent can be extorted from them and perverted to such uses, said union shop agreement is illegal, void and unconstitutional."

III.

Petitioners further amend their petition by (sic) deleting the present Paragraph 41 of the petition and inserting in lieu thereof a new Paragraph 41, to read as follows:

"41.

"Petitioners allege that the defendants named herein [fol. 141] carriers (except defendant Carolina & Northwestern Railway Company) and those named herein labor union organizations did on the 27th day of February

1953, enter into a contract effective April 15, 1953, a copy of which agreement is attached to this petition, identified as Exhibit A. Said contract is hereby made a part of this petition and incorporated herein as effectively as if said contract were set out in full in this petition.

"Defendant Carolina & Northwestern Railway Company, and defendants Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Brotherhood of Maintenance of Way, The Order of Railroad Telegraphers and the American Train Dispatchers Association, did on the first day of April, 1953, enter into a contract effective April 15, 1953, a copy of which agreement is attached to this petition as Exhibit B. All of the terms of the contract identified as Exhibit B, are hereby incorporated herein as effectively as if said contract were set out in full in this petition.

"The two agreements hereinabove described, attached to this petition as Exhibits A and B, may be hereafter referred to, and are commonly known as the 'union shop agreement'."

IV.

Plaintiffs further amend their petition by deleting the present paragraphs 42 and 43 thereof, and by adding new paragraphs 42 and 43, to read as follows:

[fol. 142]

"42.

"In negotiating with the railroad defendants concerning said union shop agreement, and in executing, maintaining and enforcing said agreement, the labor organization defendants purported and purport to act as statutory representative of the employees of the railroad defendants under the provisions of the Railway Labor Act (45 U.S.C.A., §151 *et seq.*).

"Said union shop agreement was in fact made and entered into pursuant to the recommendations of Emergency Board No. 98 appointed by the President of the United States pursuant to Section Ten of the Railway Labor Act (45 U.S.C.A., §160).

"The sole authority by which said labor organization defendants purported and purport to enter into, maintain and enforce with the railroad defendants a union shop

contract binding on the plaintiffs and the class they represent was and is the Railway Labor Act, and part of Section 2 thereof (45 U.S.C.A., §152 and Section 6 (45 U.S.C.A., §156)."

43.

"Section 2(11) of the Railway Labor Act provides

"Notwithstanding any other provision of this Act or any other statute or law of the United States, or of any State, any carrier or carriers as defined in this Act, any labor organization and labor organization duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted . . . to make agreements, requiring as a condition of continued employment, that within 60 days following the beginning of such agreement, or the expiration date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class . . ."

"Defendants herein have relied upon said Section 2(11) of the Railway Labor Act to negotiate, execute and maintain and enforce said union shop agreement despite the proscription of such agreements by the statute law ("No-Work" laws) and public policy of the States served by the railroad defendants, including the State of Georgia wherein such an agreement is contrary to the public policy of the State."

V.

Petitioners further amend their petition by deleting paragraph 45 thereof and inserting in lieu thereof the following new paragraph 45:

"45.

"Petitioners allege that the union shop contract is null and void in that it is contrary to the public policy of the State of Georgia, and of other states served by the railroad defendants, as expressed in the Georgia "No-Work Act," (Acts 1947, pp. 616-620; Georgia Code Sections 54-810-54-908) and similar statutes in other states.

[fol. 144]

VI.

Petitioners further amend their petition by deleting paragraph 50 thereof and inserting in lieu thereof a new paragraph 50 to read as follows:

"50.

"The union shop agreement contravenes the public policy of the State of Georgia, as well as that of other states served by the railroad defendants, and the maintenance and enforcement of said agreement, or of any of its terms making membership in a labor organization a condition precedent to employment or to remaining in the employ of any of the railroad defendants is subject to be, and ought to be, enjoined by this Court."

VII.

Petitioners further amend their petition by deleting the present paragraph 51 thereof and inserting in lieu thereof a new paragraph 51 to read as follows: /

"51.

"Petitioners allege that the Railway Labor Act (45 U.S. C.A., §151 *et seq.*), and particularly Sections 2, 6 and 10 thereof, violate the First, Fifth, Ninth and Tenth Amendments to the Constitution of the United States, and are therefore unconstitutional, null and void, to the extent that said Railway Labor Act (1) authorized, permitted and facilitated the execution, maintenance and enforcement of said union shop agreement, and (2) authorizes, permits or facilitates the exaction from plaintiffs, and the class they represent, contrary to their desires and wishes, of their property in the form of the dues, fees and assessments required under the terms of the union shop agreement to be paid to the labor organization defendants, which property is then used for purposes not germane to collective bargaining, but to support ideological political doctrines and candidates which petitioners are not willing to support and cannot lawfully be forced to support, and is otherwise used in attempts to force upon petitioners and the class they represent ideological conformity, on political and eco-

omic matters, with the views held by those few individuals actually making the policy decisions on such matters as the labor organization defendants named herein."

VIII.

Petitioners amend their petition by deleting paragraph 52 thereof and inserting in lieu thereof the following paragraph 52:

"52.

"Amendment I to the Constitution of the United States provides, in part, as follows:

"Congress shall make no law . . . abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the Government for redress of grievances."

"Amendment V to the Constitution of the United States provides, in part, as follows:

"... nor shall any person . . . be deprived of life, liberty, or property, without due process of law . . ."

[fol. 146] "Amendment IX to the Constitution of the United States provides as follows:

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

"Amendment X of the Constitution of the United States provides:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

IX.

Petitioners further amend their petition by deleting present paragraph 53 of said petition and inserting in lieu thereof the following new paragraph 53:

"53.

"Petitioners allege that the union shop agreement deprives petitioners, and the class they represent, of the liberty and property, without due process of law contrary to the Fifth Amendment to the United States Constitution, for the following reasons:

"(a) Said agreement forces petitioners and the class they represent into an unnatural association with others of different economic and political views;

"(b) Said agreement does and will extort from petitioners and the class they represent their property in the form of dues, fees, and assessments, on penalty of losing their jobs, which dues, fees and assessments are used to [fol. 147] support candidates for public office and political and economic ideologies opposed by plaintiffs and the class they represent, and oppose those favored by plaintiffs and the class they represent;

"(c) Said agreement deprives petitioners and the class they represent of the right to contract and to earn a living in a lawful, usual occupation except on terms, as indicated above, infringing upon the personal rights of plaintiff and the class they represent."

X:

Petitioners further amend their petition by inserting in lieu of paragraph 55 thereof a new paragraph 55 to read as follows:

"55.

"The union shop agreement deprives plaintiffs and the class they represent of personal liberties guaranteed to them by the First, Fifth, Ninth and Tenth Amendments to the Constitution of the United States in that it denies to petitioners and the class they represent personal rights guaranteed by said Amendments to contract for employment in their normal and usual occupations and vocations, unless petitioners agree to (1) join a union which they do not wish to join, and (2) pay dues, fees and assessments to such union, which they do not wish to pay, and

(3) submit to having such dues, fees and assessments by such labor unions to support candidates for office, and political and economic ideologies which petitioners and the class they represent oppose, and support candidates and ideologies favored by petitioners and the class they represent."

[fol. 148]

XI.

Petitioners amend their petition by deleting paragraph 57 and inserting a new paragraph 57 to read as follows:

"57.

"Petitioners allege that the union shop agreement deprives them and the class they represent of rights guaranteed them by the First, Fifth, Ninth and Tenth Amendments to the Constitution of the United States, and the portions thereof quoted in paragraph 52 of their petition, in that, by compelling petitioners and the class they represent (1) to indicate a willingness to join the union, and (2) submit to the exaction from them of dues, fees and assessments which are used for purposes not above specified, it (1) subjects them to a process of thought-moulding or "brain-washing" technique designed to secure their adherence to the political and economic ideologies espoused by the few persons controlling the policies of the labor union defendants; (2) compels them to use their money, in association with others, in support of causes they do not wish to associate in advancing and which are in principles repugnant to them and opposing to their own principles and principles which they favor; and (3) it dilutes their right to the free exercise of the right of free franchise, and of petition to the Government for redress of grievances by this involuntary support of candidates and candidates which they oppose, thus impairing the effectiveness of their support of candidates and ideologies which they favor, and (4) deprives them of the right of free expression of the press (by using their money to support the dissemination and circulation of views on economic and political matters to which they do not submit or actually oppose)."

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Petitioners further amend their petition by deleting paragraph (a) of the prayer of said petition and insert in lieu thereof the following paragraph (a):

"(a) That a permanent injunction be granted enjoining defendants (their officers, agents, servants, employees and persons acting in concert with them) from enforcing the union shop agreement and discharging petitioners or any member of the class they represent, who refuse to join or remain members of one of the labor union defendants."

Petitioners amend their petition by deleting paragraph (e) of the prayer to said petition by inserting a paragraph (e) to read as follows:

"(e) That the Railway Labor Act be declared unconstitutional and in violation of Amendments 1, 5, 9 and 10 of the United States Constitution, for the reasons set forth in this petition, to the extent that it permits, facilitates or authorizes, or has been and is applied by defendants as authority for, the negotiation, execution, maintenance and enforcement of, said union shop agreements and the exaction from plaintiffs and the class they represent of dues, fees and assessments which are or will be used for the purposes, not germane to collective bargaining, set forth in this petition contrary to the constitutional rights of petitioners and the class they represent.

Petitioners amend their petition by renumbering paragraph (f) of the prayer so that it will become paragraph (g) and by inserting a new paragraph (f) to read as follows:

“(f) That all dues, fees and assessments unlawfully exacted from plaintiffs and the class they represent be restored and that petitioners and the class they represent have such other and further relief,

cluding monetary damages, compensative, and restoration of employment necessary adequately to protect their rights.

Wherefore, petitioners pray that this be allowed and ordered filed.

Gambrell, Harlan, Russell, Moye
Smythe Gambrell, Charles A.
P. McKenna, T. Arnold Jacobson
Petitioners.

825 Citizens & Southern Nat'l Bank
Georgia, Persons Building, Macon, Georgia

[fol. 151] *Duly sworn to by Edna L. [omitted in printing.]*

[fol. 152] *Duly sworn to by Hazel E. C. [omitted in printing.]*

[fol. 153] *Duly sworn to by Elizabeth [omitted in printing.]*

[fol. 154] Certificate of service (omitted)

[fol. 155]

ORDER

The foregoing amendment read consisting of [omitted] is hereby allowed and ordered filed, subject to demurrer.

This Sept. 23, 1958.

O. L. Long, Judge, Bibb County

[File endorsement omitted]

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amendment be al-

& Richardson, E.
Moye, Jr., Terry
s, Attorneys for

Building, Atlanta,
Georgia.

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bb, jurat omitted

Ferguson, jurat

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to objection and

Superior Court.

[fol. 156]

IN THE SUPERIOR COURT OF BIBB COUNTY, GEORGIA

[Title omitted]

OBJECTIONS TO AMENDMENT TO PETITION FILED SEPTEMBER 23, 1958—Filed October 7, 1958

Come now the defendants other than the railroad defendants, and object (except where otherwise specified) to the filing of the Amendment to Petition September 23, 1958 subject to objection, on the following grounds:

I.

These defendants do not object to the amendment contained in Section I of the Amendment to Petition.

II-XIV.

Sections II through XIV of the Amendment make additions not heretofore alleged in the Petition, Interpleader Petition, or their multitudinous amendments in the course of the five and one-half years since this action was instituted. Insofar as the Amendment makes corrections to the status of the parties or shows which of the original intervening petitioners are no longer properly parties, these defendants would not object to such aspect of the Amendment. But these sections add new and different [fol. 157] facts, assert different causes of action, and ask for different types of relief. As the Court knows, the parties have entered into a comprehensive Stipulation. That Stipulation reserves to these defendants the right, which is unquestionably would have in the absence of stipulation to argue in this and higher courts the significance and weight of all the evidence. It would be improper now to permit basic allegations to be amended or added, or different types of relief to be prayed for, so that a different significance could now be argued than could have been argued when the Stipulation was entered into.

With respect to said several sections these defendants object to each of said specifically (except where no objection is as follows (numbered to correspond paragraph numbers of the Amendments

II.

(There are two sections numbered II we discuss here the Section II begin

25. They do not object to the first amendment to paragraph 25. They object of the amendment to said paragraph.

26. They do not object to the first amendment to paragraph 26. They object of the amendment to said paragraph on that it is irrelevant to any relief request heretofore filed, and attempts to set up cause of action.

27. They do not object to the first amendment to paragraph 27. They object of the amendment to said paragraph on [fol. 158] that it is irrelevant to any the pleadings heretofore filed, and attempt new and different cause of action.

28. They do not object to the amendment 28.

29. They do not object to the first amendment to paragraph 29. They object of the amendment to said paragraph.

30. They do not object to the first amendment to paragraph 30. They object of the amendment to said paragraph on that it is irrelevant to any relief requestings heretofore filed, and attempts to different cause of action.

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II.

(Beginning on page 5)

These defendants object to all the amendments
second Section II of the Amendment to Petition
would amend paragraphs 31, 32 and 33 of the Peti
heretofore amended. To the extent that the allegat
this section are not repetitious of paragraphs 59(a) t
(c) of the Petition as amended on February 4, 195
seek to attribute significance to facts contained
Stipulation which significance they did not have wh
Stipulation was made, and they allege facts not sup
by proof and which pursuant to the Stipulation cann
be proven.

III.

They do not object to that portion of the amendm
Section III.

IV.

They object to Section IV of the Amendment
[fol. 159] further grounds that they seek to attrib
nificance to the facts contained in the Stipulation
significance they did not have when the Stipulation
made, they seek to set up a new and different ca
action, and allege facts not supported by proof and
under the Stipulation cannot now be proven.

V-VI.

The allegations in these two sections of the Amen
are argument and legal conclusions; to the extent tha
may contain allegations of fact, such facts, pursuant
Stipulation, cannot now be proven.

VII.

They object to this section of the Amendment o
further grounds that it alleges facts not supported by
and which under the Stipulation cannot now be p
and presents entirely new material to change the t
of the case as it heretofore existed, and seeks to att

significance to the facts contained in the Stipulation which significance they did not have when the Stipulation was made.

VIII.

They object to section VIII of the Amendment on the ground that it consists entirely of quotations of excerpts from the Constitution of the United States; such quotations have no proper place in pleading.

IX-X-XI.

They object to these sections of the Amendment because to the extent they are not repetitious of allegations heretofore made they are argumentative, seek to attribute significance to the Stipulation which significance the Stipulation [fol. 160] did not have when it was made, allege facts not supported by proof and which under the Stipulation cannot now be proven; and change the theory of the cause of action heretofore presented.

XII.

They do not object to section XII of the Amendment.

XIII.

They object to section XIII of the Amendment on the further grounds that it would change the theory of the case by asking that the Railway Labor Act be declared unconstitutional, presenting a new theory of the cause of action.

XIV.

They object to section XIV of the Amendment on the further grounds that it asserts a cause of action not heretofore asserted; asks for a type of relief entirely different from any relief heretofore requested; and does so on the basis of asserted facts not heretofore pleaded.

Wherefore, these defendants submit that the Amendment to Petition, filed on September 23, 1958 subject to objection, be stricken. If it is not stricken in its entirety, the defendants submit herewith and file the attached Answer to the

Amendment to Petition or such parts thereof as are not stricken.

Respectfully Submitted,

Milton Kramer, Schoene and Kramer, 1625 K Street,
N. W., Washington 6, D. C.

[fol. 161] David L. Mincey, 321 Cotton Avenue,
Macon, Georgia.

October 6, 1958

[fol. 162] Certificate of service (omitted in printing).

[File endorsement omitted]

[fol. 163]

IN THE SUPERIOR COURT OF BIBB COUNTY

ORDER OVERRULING OBJECTIONS TO AMENDMENT TO PETITION
—November 10, 1958.

After hearing argument by counsel for plaintiffs and defendants on the foregoing objections, the said objections and each and all of them, are hereby overruled.

This November 10, 1958.

O. L. Long, Judge, Bibb Superior Court.

Filed in Office, November 10, 1958.

Romas Ed. Raley, Clerk.

[fol. 164]

IN THE SUPERIOR COURT OF BIBB COUNTY, GEORGIA

[Title omitted]

ANSWER TO AMENDMENT TO PETITION
FILED SEPTEMBER 23, 1958

Come now the defendants other than the railway company defendants, and for answer to the Amendment to Petition filed September 23, 1958, say (numbered to correspond to the section and paragraph numbers as set forth in the Amendment to Petition):

I.

Section I of the Amendment does not require an a

II.

(There are two sections numbered II in the Amendment we discuss here the Section II beginning on page

25. They admit the first four sentences of the amendment to paragraph 25, and deny the remainder of paragraph. They allege that the defendant union represents the craft or class in which petitioner Loo employed is the Brotherhood of Railway and Steam Clerks, Freight Handlers, Express and Station Employees (hereinafter sometimes referred to as the "Brotherhood of Railway Clerks").

They allege further that the union shop agreement does not require membership as a condition of employment [fol. 165] and that said defendant and the other defendant unions do not request the termination of employment of any employee subject to the union shop agreement to whom membership is not available upon the same terms and conditions as are generally applicable or to whom membership is denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership. They allege further that no employee subject to the union shop agreement who has made timely tender of the amount of dues, fees and assessments (including fines and penalties) uniformly required as a condition of acquiring or retaining membership in accordance with the terms of said agreement has been deprived of or her employment because of said agreement or as a result thereof, or been subjected to any threat of such termination.

They allege further that the dues, fees and assessments (not including fines and penalties) required as a condition of acquiring or retaining membership would be paid to the appropriate local lodge of defendant Brotherhood of Railway Clerks; that said amounts together with receipts from all other sources become part of the general resources of said local lodge available for expenditure; that said

sources are used, among other purposes, to make a per capita payment to the said defendant Brotherhood; that said per capita payment, together with revenues from other sources, become a part of the general resources of said defendant Brotherhood available for expenditure in accordance with the Constitution and By-Laws of said defendant.

They allege further that all the activities of the said [fol. 166] defendant Brotherhood and the other defendant unions and their local lodges are carried on for the purpose of maintaining their existence and position as effective collective bargaining agents of the employees they represent and conducting said collective bargaining activities; and that all their activities and expenditures are germane to collective bargaining.

26. They admit the first subparagraph of paragraph 26.

They admit that the amounts and dates stated in the second subparagraph are approximately correct, and deny all other allegations or statements in the second subparagraph, and allege that when petitioner Cobb became a member of the Brotherhood of Railway Clerks in 1957 it was by reinstatement, she having previously been a member.

They allege that the petitioner Cobb could have avoided making said payments by posting a timely supersedeas bond in the amount of \$72 but chose voluntarily to make said payments instead of posting said bond; and that as the result of making said payments said petitioner has during that period enjoyed the privileges of membership in the defendant Brotherhood of Railway Clerks.

27. They admit the first subparagraph of paragraph 27.

They admit that the amounts and dates stated in the second subparagraph are approximately correct, and deny all other allegations or statements in the second subparagraph.

They allege that the petitioner Davis could have avoided making said payments by posting a timely supersedeas [fol. 167] bond in the amount of \$72 but chose voluntarily to make said payments instead of posting said bond; and that as the result of making said payment said petitioner

has during that period enjoyed the privileges of membership in the defendant Brotherhood of Railway Clerks.

28. They admit the allegations of paragraph 28 and deny that petitioner Fritschel has not been a member of any of the labor union defendants since the commencement of this litigation, and allege that he became a member of the Brotherhood of Railway Clerks two years before the commencement of this litigation and continued to be such member until October 2, 1935, when she was suspended for non-payment of dues.

29. They admit the first four sentences of paragraph 29 and deny the remainder of said paragraph. They reallege and reaffirm as further answer to paragraph 29 with respect to petitioner Ferguson the allegations of the defendants make *supra* in answer to paragraph 29. Petition as amended with respect to petitioner L.

30. They admit the first subparagraph of paragraph 30. They admit that the amounts and dates stated in the second subparagraph are approximately correct, and deny the other allegations or statements in the second subparagraph. They allege that the petitioner Street could have made said payments by posting a timely supersedeas bond in the amount of \$72 but chose voluntarily to make said payments instead of posting said bond; and that as a result of making said payments said petitioner has during that period enjoyed the privileges of membership in the [fol. 168] defendant Brotherhood of Railway Clerks. They allege further that petitioner Street had been a member of the defendant Brotherhood of Railway Clerks at various times prior to his present membership, his earlier memberships having been terminated for non-payment of dues and that one such termination was on October 3, 1935.

II.

(Beginning on page 5)

31. They deny that the dues, fees and assessments were used for the purposes stated in paragraph 31, and deny the remainder of said paragraph. They allege that the petitioners are employed in a craft or class repre-

by the defendant Brotherhood of Railway Clerks, and they repeat, reallege and reaffirm the allegations in answer to paragraph 25 above as further answer to paragraph 31.

32. They deny that the dues, fees and assessments are used for the purposes stated in the first subparagraph of paragraph 32, and deny the remainder of the first subparagraph of paragraph 32. As further answer to said subparagraph they allege that all the petitioners are employed in a craft or class represented by the defendant Brotherhood of Railway Clerks, and they repeat, reallege and reaffirm the allegations in answer to paragraph 25 above.

They deny that the dues, fees and assessments are used for the purposes stated in the second, third, fourth, and fifth subparagraphs of paragraph 32, and deny the remainder of the said subparagraphs of paragraph 32. As further answer to said subparagraph they allege that all the petitioners are employed in a craft or class represented [fol. 169] by the defendant Brotherhood of Railway Clerks, and they repeat, reallege and reaffirm the allegations in answer to paragraph 25 above.

They allege further that the defendant unions do not expend any funds or engage in any activities in an effort or attempt to convert petitioners or anyone else to any political or economic ideologies; that the policies of said defendants are not controlled by a small group of individuals but are arrived at by their members collectively through democratic processes established by their constitutions; and that all the activities and expenditures of said defendants pertaining to the dissemination of information are carried on pursuant to their obligation to keep the employees they represent informed of developments of mutual interest to the employees they represent in their capacity as such employees.

33. They deny the allegations of paragraph 33. For further answer, they allege that all the activities of the defendant unions and their local lodges are carried on for the purpose of maintaining their existence and position as effective collective bargaining agents of the employees they represent and conducting collective bargaining activities; that all such activities and expenditures are germane to

collective bargaining; and they repeat, realleg affirm the allegations these defendants make in answer to paragraphs 25 and 32 of the petition as

III.

41. They admit the allegations of paragraph

IV.

42. They admit the allegations of the first subp of paragraph 42. They allege that only in their [fol. 170] of statutory collective bargaining re tives could the defendant labor organizations leg into the union shop agreement, pursuant to S Eleventh of the Railway Labor Act.

They deny the second and third subparagraphs graph 42. For further answer to said second a subparagraphs, they allege the following facts:

Pursuant to the provisions of the Railway L the duly authorized and designated representative that Act of 17 classes and crafts of non-operating employees (including all the unions defendant in tion) on February 5, 1951 served a uniform notice railroads generally throughout the United States ing the defendant railroads, proposing the making shop and check off agreements drawn substantial language of Section 2, Eleventh of the Railway L permitting such agreements. Less comprehensi shop agreements were thereafter negotiated wit railroads, not including any of the defendant railr the dispute arising from the proposal of February remained unsettled on the overwhelming propo the railways throughout the country, including th dant railroads, on November 15, 1951, and the Pres the United States on the date appointed Emergenc No. 98 pursuant to Section 10 of the Railway La to investigate the dispute and to report thereon Said Emergency Board made such investigation port, and thereupon ceased to exist and engaged in activities. The defendant railroads, among other appeared before said Emergency Board urging said [fol. 171] to recommend against the making of an

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shop agreements. Said Emergency Board No. 98 made report to the President on February 14, 1952. In report it recommend that all the carriers that appear before it enter into a joint national agreement with 17 organizations represented through their Employees National Conference Committee providing for a union shop and check off less comprehensive and more restrictive than the agreement requested by the labor organizations. Defendant railroads, including the defendant railroads, refused to enter into such an agreement and in consequence no joint national agreement was made. However, in the course of the next year the great majority of the carriers throughout the country, exceeding 250 in number, but not including any of the defendant railroads, made agreements with the Employees National Conference Committee less comprehensive and more restrictive than that recommended by Emergency Board 98. After such preponderance of the railroads had entered into such agreements, the defendant railroads entered into the union shop agreement with the defendant unions which is substantially the same as that entered into by almost all the railroads in the country.

These defendants first entered into activities seeking union shop as a result of persistent demands of their membership extending over many years, and supported enactment of Section 2, Eleventh of the Railway Labor Act for that reason. The matter of a union shop agreement has been the subject of resolutions in many conventions of defendant labor organizations. During the years that Section 2, Eleventh was under consideration by Congress and [fol. 172] union shop agreements were being negotiated, wide publicity was given to such activities by the daily press, the newspaper "Labor" and the publications of the defendant unions, and such activities were a subject of conversation among the employees represented by the defendant unions, including the employees of the defendant railroads they represent. The overwhelming proportion of the employees represented by the defendant unions, including those they represent who are employed by the defendant railroads, indicated approval of such activities.

43. They admit that Section 2, Eleventh provides in part as stated in the first subparagraph of paragraph 43. They admit that in negotiating and executing the union shop

agreements with the defendant railroads, the Section 2, Eleventh of the Railway Labor Act and the remainder of paragraph 43.

V.

45. They deny paragraph 45.

VI.

50. They deny paragraph 50 and allege that the shop agreements with the defendant railroads do not establish any condition precedent to employment. They allege further that enjoining any or all of said agreements would contravene the public policy of Georgia.

VII.

51. They deny paragraph 51. For further denial of said paragraph they repeat, reallege and recommit themselves to the same in the second and subsequent subparagraphs of the answer [fol. 173] graph 25 *supra*. They allege further that the defendant unions do not expend any funds for any activities in an effort or attempt to convince or anyone else to any political or economic force upon plaintiffs or anyone else ideological conformity; that the policies of said defendants are the views held by the said defendants are not controlled by a small group of individuals but are arrived at by the members collectively through democratic process by their constitutions; and that all the expenditures of said defendants pertaining to the dissemination of information are carried on pursuant to the duty to keep the employees they represent informed of developments of mutual interest to the employees and to represent in their capacity as such employees.

VIII.

52. They admit paragraph 52.

IX-XI.

53, 55, 57. Paragraphs 53, 55, and 57 consist of conclusions and conclusion not requiring answering. To the

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denied.

Answering further, these defendants allege that no
vision of the union shop agreement or its operation
poses on anyone any conformity to or with anything
requires anyone to think or say anything or to support
oppose any person, concept or thing or to subject him-
or herself to anything other than to contribute, together
with all other employees represented by the collective
bargaining representative of his or her craft or class, on
[fol. 174] equal and non-discriminatory basis, to the support
of the collective bargaining agency of the craft in which
he or she is employed, by the payment of the periodic dues
initiation fees and assessments (not including fines and
penalties) uniformly required as a condition of acquiring
or retaining membership, and that said amounts are very
moderate. Answering further, these defendants repudiate
and reaffirm the allegations *supra* in answer to
paragraphs 25 and 32 of the answer to the petition
amended.

XII-XIV.

The amendments made by these sections of the Amendment
to Petition constitute prayers for relief, which need not
be answered and which should be denied.

Wherefore, having fully answered, the union defendants
pray that the Petition be dismissed, the injunction dissolved,
and costs assessed against petitioners.

Respectfully submitted,

Milton Kramer, Schoene and Kramer, 1625 K Street
N.W., Washington 6, D. C.

David L. Mincey, 321 Cotton Avenue, Macon,
Georgia.

October 6, 1958

[fol. 175] *Duly sworn to by Earl R. Kinley, jurat omitted
in printing.*

[fol. 176] CERTIFICATE OF SERVICE (omitted in printing).

[fol. 177]

IN THE SUPERIOR COURT OF

[Title omitted]

PRE-TRIAL ORDER—November

This cause came on for pre-trial conference on November 23, 1958, before me, the presiding judge of the Superior Court of Bibb County, Georgia, with counsel for all parties being before the Court, and, pursuant to the provisions of Ss 81-1013 and 81-1014 of the Code of Georgia, authorizing and governing pre-trial procedure, a pre-trial conference action was taken at said conference.

Stipulation

The parties presented to the Court a Stipulation of Facts attached thereto, executed by Counsel for all parties.

The Stipulation contains an agreement to try both the law and the facts to the Court, and provides for the introduction of evidence in addition to the stipulated facts.

The Court accepted the Stipulation of Facts; approved the procedures for the introduction of specified additional evidence; agreed to empanel [fol. 178] a jury; and scheduled trial for the week of November 10, 1958.

Plea of *Res Judicata*

The defendants other than the Railway Company, requested leave to withdraw a plea previously filed by them on May 22, 1958. The Court granted that request and said defendants withdrew said plea of *res judicata*.

Objections to Answer of Defendant

The Railway Company Defendant

The plaintiffs then requested permission to file their objections to the filing of the Jury

OF BIBB COUNTY

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umber 10, 1958

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e July 22, 1957 answer

of the defendants other than the Railway
defendants, which objections had been filed by
August 27, 1957.

The Court granted that request and said o
withdrawn by plaintiffs.

Amendments to Petition

The plaintiffs offered an amendment to
which amendment was personally served up
present.

Plaintiffs stated that they would request
tion of Charles L. Bradford, *et al.*, for leave
herein, filed July 12, 1953, be dismissed in
above-mentioned amendment were received v
tion by other parties, and the Court stated
event, said request would be granted.

[fol. 179] Plaintiffs' Notice to Produce

Plaintiffs then requested leave to withdraw
produce 6 items in writings, letters and doc
used as evidence for plaintiff S. B. Street, wh
served upon counsel for the labor union d
January, 1958. The Court granted that req
notice to produce was withdrawn.

Other Matters

The parties agreed that they would not c
introduction of any of the documentary evidence
in the Stipulation or identified in the depo
tioned in the Stipulation on the ground that
offered is a mere copy and not the original c

Order

In view of the foregoing and pursuant to G
Ss 81-1014 the Court enters the following
shall control the subsequent course of this c
modified at the trial to prevent manifest injus

(1) The Stipulation and Stipulation of Fa
by the parties on August 14, 1958, and prof
pre-trial conference, is approved by the Cou

(2) The trial of this cause is hereby set for the week of November 10, 1958, and will be held at the Court House in Birmingham, Alabama.

(3) The withdrawal of the plea of not guilty previously filed by the defendants other than the Railroad Company on May 22, 1958, is approved.

(4) The withdrawal of objections filed by the defendants herein on August 27, 1957, to the answer [fol. 180] other than the railroad company, and the withdrawal of plaintiffs' notice to produce writings, letters and documents relating to the accident on Street and served in January, 1958, is approved.

(5) The amendment to the petition filed by the plaintiffs is allowed and ordered filed subject to the defendants to demur or object within the time prescribed by law.

(6) The request of the plaintiffs to allow the deposition of Charles L. Bradford, *et al.*, for leave to depose them will be granted if no objection is made to the petition proffered at the pre-trial conference. In the event objection is made to said deposition, the plaintiffs may renew their request at an appropriate time before or at trial.

So Ordered this 10th day of November, 1958.

O. L. Long, Judge, Bibb Superior Court,
Judicial Circuit.

We consent and agree to the above.

Gambrell, Harlan, Russell, Moyer, Jr.,
Smythe Gambrell, Charles A. Moyer, Jr.,
Counsel for Plaintiffs.

[fol. 181] Schoene & Kramer, M. K. Kramer,
Defendants other than Railroad Company.

David L. Mincey, Counsel for Defendants,
Railroad Company Defendants.

Bloch, Hall, Groover & Hawkins,
Counsel for Railroad Company Defendants.

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had without a jury.

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order:

e & Richardson, E.
c., Terry P. McKenna,

Kramer, Counsel for
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defendants other than

s, Charles J. Bloch,
ndants.

Harris, Russell, Weaver & Watkins, Counsel for
road Company Defendants.

[File Endorsement Omitted]

[fol. 182]

IN THE SUPERIOR COURT OF BIBB COUNTY

[Title omitted]

FINDINGS, CONCLUSIONS, ORDER, JUDGMENT
AND DECREE—December 8, 1958

The above-styled cause, by agreement of all
having come on regularly to be tried by this Court
out a jury, November 10, to 13, and November 20, 1958.
The Court, after receiving evidence and hearing argu-
ment and considering the entire record finds and concludes
that:

(1) The Court has jurisdiction of all parties
the causes of action asserted by the plaintiffs. This is
class action in which the plaintiffs represent hereinafter
non-operating employees of the railroad defendants
affected by, and opposed to, the hereinafter referred to
union shop agreements, who also are opposed to the
[fol. 183] collection and use of periodic dues, fees and
assessments for support of ideological and political demands
and candidates and legislative programs or for other pur-
poses other than the negotiation, maintenance and admin-
istration of agreements concerning rates of pay, working
conditions, or wages, hours, terms or other conditions
of employment or the handling of disputes arising out of
the above. The individual defendants and labor organization
defendants represent all the members of said labor
organization defendants.

(2) Effective April 15, 1953, the labor organization
defendants, without authority from the employees rep-
resented by them but relying upon such authority as may
be implied from the Railway Labor Act, and without

ing said employees any opportunity to express themselves with respect thereto, entered into union shop agreements with the railroad defendants. The union shop agreements provide, in part, that all non-operating employees of the railroad defendants, including plaintiffs and those represented by plaintiffs, must "as a condition of their continued employment subject to such agreements, become members of the organization party to this agreement representing their craft or class (the labor organization defendants herein) within sixty (60) calendar days of the date they first perform compensated service as such employees after the effective date of this agreement, and thereafter shall maintain membership in such organizations" and that "Nothing in this agreement shall require an employe to become or to remain a member of the organization if such membership is not available to such employe upon the same terms and conditions as are generally applicable to any other member, or if the membership of such employe is denied or terminated for any reason other than the failure [fol. 184] of the employe to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership."

(3) Said union shop agreements are being enforced by the labor organization defendants and the railroad defendants with respect to plaintiffs and the class they represent, except as to three of the named plaintiffs herein who have filed bonds pursuant to order of this Court suspending the effectiveness of the agreements pending the determination of this litigation, and as to them the union shop agreements would be enforced but for the posting of such bonds.

(4) Pursuant to the said union shop agreements, and, except as indicated in paragraph (3) above, each of the plaintiffs and each member of the class they represent has been, is being, and, unless the injunction requested by them is granted, will be compelled to pay initiation fees, reinstatement fees and periodic dues in substantial amounts to the labor organization defendant representing his or her craft or trade as a condition of employment or con-

tinued employment, and to become or remain a member of said labor organization defendant.

(5) The funds so exacted from plaintiffs and the class they represent by the labor union defendants have been, and are being, used in substantial amounts by the latter to support the political campaigns of candidates for the offices of President and Vice President of the United States, and for the Senate and House of Representatives of the United States, opposed by plaintiffs and the class they represent, and also to support by direct and indirect financial contributions and expenditures the political campaigns of candidates for State and local public offices, opposed by plaintiffs and the class they represent. The said funds are [fol. 185] so used both by each of the labor union defendants separately and by all of the labor union defendants collectively and in concert among themselves and with other organizations not parties to this action through associations, leagues, or committees formed for that purpose.

(6) Those funds have been and are being used in substantial amounts to propagate political and economic doctrines, concepts and ideologies and to promote legislative programs opposed by plaintiffs and the class they represent. Those funds have also been and are being used in substantial amounts to impose upon plaintiffs and the class they represent, as well as upon the general public, conformity to those doctrines, concepts, ideologies and programs.

(7) The exaction of moneys from plaintiffs and the class they represent for the purposes and activities described above is not reasonably necessary to collective bargaining or to maintaining the existence and position of said union defendants as effective bargaining agents or to inform the employees whom said defendants represent of developments of mutual interest.

(8) The exaction of said money from plaintiffs and the class they represent, in the fashion set forth above by the labor union defendants, is pursuant to the union shop agreements and in accordance with the terms and conditions of those agreements.

Said union shop agreements were negotiated and entered into and are maintained, administered and enforced by the labor union defendants and the railroad defendants pursuant to the provisions of the Railway Labor Act (U.S.C. Sect. 151 *et seq*) and particularly Section 2 (First, Second, Third, Fourth, Seventh) and (Eleventh), 5, 6 and 10 thereof.

[fol. 186] Said union shop agreements are permitted by Section 2 (eleventh) of the Railway Labor Act (45 U.S.C. 152) "notwithstanding any other provision of this Act or of any other statute or law of the United States or territory thereof, or of any State."

Said exaction and use of money and said union shop agreements and their enforcement are contrary to the United States Constitution, the law and public policy of this State and are contrary to the statutes or laws of other states in which the defendant railroads operate. Said exaction and use of money, said union shop agreements and Section 2 (eleventh) of the Railway Labor Act and their enforcement violate the United States Constitution which guarantees to individuals protection from such unwarranted invasion of their personal and property rights, (including freedom of association, freedom of thought, freedom of speech, freedom of press, freedom to work and their personal freedom and rights) under the cloak of federal authority.

(9) Unless enjoined, defendants will continue the complained of acts above mentioned, the union shop agreements having no termination date, and the injury to plaintiffs will be irreparable.

(10) The labor union defendants, by their commingling of funds used for collective bargaining purposes and activities and those used for the complained of purposes and activities set forth above have made it impossible to segregate the amount of dues collected from plaintiffs of the class they represent which are and will be used for collective bargaining purposes from those which are and will be used for the complained of purposes and activities set forth above.

Wherefore, it is Ordered, Adjudged and Decreed that:

Defendants, Georgia Southern and Florida Railway Company; Southern Railway Company; Cincinnati, New Orleans and Texas Pacific Railway; Alabama Great Southern Railroad Company; New Orleans and Northeastern Railroad Company; Carolina and Northwestern Railway Company; New Orleans Terminal Company; St. Johns River Terminal Company; Harriman and Northeastern Railroad Company; International Association of Machinists; International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America; International Brotherhood of Blacksmiths, Drop Forgers and Helpers; Sheet Metal Workers International Association; International Brotherhood of Electrical Workers; Brotherhood of Railway Carmen of America; International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers; Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees; Brotherhood of Maintenance of Way Employees; Order of Railroad Telegraphers; Brotherhood of Railroad Signalmen of America; National Organization Masters, Mates and Pilots; National Marine Engineers Beneficial Association; American Train Dispatchers Association; Railroad Yardmasters of America; L. C. Ritter, R. H. Hubbard, Norman Dugger, J. R. Westbrook, John Pelkafer, T. B. Steadman, C. J. Brice, C. D. Bruns, W. G. Roberts, H. H. Dent, J. J. Duffy, B. R. Acuff, T. J. Roberts, Irvin Barney, W. W. Dyke, W. B. Chapman, Anthony Matz, J. H. Desotell, Lewis Craig, George M. Harrison, G. A. Link, J. D. Avera, J. P. Alexander, G. W. Ball, R. K. Lanfair, F. G. Gardner, H. R. Duensing, E. V. Peed, Jesse Clark, E. C. Melton, F. O. Dasher, B. T. Hurst, John M. Bishop, W. L. Ball, William O. Holmes, O. H. Braese, R. M. Crawford, T. W. Grimmett, M. G. Schoch, H. E. Ivey, T. J. Dame, and Charles J. MacGowan, and all persons, firms or corporations acting in concert with them, be and they hereby are perpetually enjoined from enforcing the said union shop agreements (copies of which are attached as exhibits to the petition herein) and from discharging petitioners, or any member of the class they represent, for refusing to

become or remain members of, or pay periodic dues or assessments to, any of the labor union defendants, provided, however, that said defendants may at any time petition the court to dissolve said injunction upon showing that they no longer are engaging in the immoral and unlawful activities described above.

In response to the prayers of the plaintiffs and railroad defendants for declaratory judgment, I find and declare Section Two (Eleventh) of the said Railway Labor Act to be unconstitutional to the extent that it purports to or is applied to permit, the exaction of funds from plaintiffs and the class they represent for the complainant's purposes and activities set forth above, and I hereby declare the union shop agreements, copies of which are attached to the petition, to be null, void, and of no legal effect as between the parties, and that the above-described enforcement of said union shop agreements is illegal in that it deprives plaintiffs, and the class they represent, of their above-mentioned personal rights guaranteed by the Constitution of the United States and the laws and customs of this State and other States as set forth above. I further find and declare that plaintiffs are entitled to the return of all periodic dues, fees and assessments which they have been compelled to pay the labor union defendants under the terms of the union shop agreements.

It Is Further Ordered and Decreed That:

Hazel E. Cobb do have and recover of the defendant Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and the members thereof, the sum of . . . \$158.25;

J. H. Davis do have and recover of the defendant Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and the members thereof, the sum of . . . \$133.50;

S. B. Street do have and recover of the defendant Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and the members thereof, the sum of . . . \$151.50;

This decree and order shall operate as an adjudication of the basic common rights asserted by plaintiffs in their own behalf and on behalf of other employees of the defendant railroads similarly situated, and shall not constitute any adjudication of claims for monetary damage, or for refund of dues, fees or assessments, if any, of any members of such class who have not made an individual personal appearance in this case.

*It is further ordered that the plaintiffs have and recover of the defendants judgment in the sum of \$210.45, costs, for the use of the officers of the Court.

This 8 day of December, 1958.

O. L. Long, Judge of Superior Courts, Macon Judicial Circuit.

[File endorsement omitted]

[fol. 190]

IN THE SUPERIOR COURT OF BIBB COUNTY, GEORGIA

No. 16,537

NANCY M. LOOPER, *et al.*, Plaintiffs,

v.

GEORGIA SOUTHERN & FLORIDA RAILWAY COMPANY, *et al.*,
Defendants.

Brief of the Evidence

had upon the trial of the above-captioned case, approved by the Trial Judge pursuant to Code of Georgia, Section 6-802, after written notice to the opposite parties required by Code Section 24-3364.

Said case was tried before the Honorable O. L. Long, Judge of Bibb Superior Court, beginning November 10, 1958, without a jury by agreement of the parties. Judgment for the Plaintiffs was entered December 8, 1958.

APPEARANCES

The Plaintiffs were represented at the trial by: Messrs. E. Smythe Gambrell, Charles A. Moye, Jr., and Theodore McKenna, all of Atlanta, Georgia.

The Railway Company Defendants (who introduced evidence and examined no witnesses) were represented at the trial by: Messrs. Charles J. Bloch, and John B. F. Jr., both of Macon, Georgia.

The Individual Defendants and Labor Organization Defendants were represented at the trial by: Messrs. P. Schoene and Milton Kramer, of Washington, D.C. by David L. Mincey, of Macon, Georgia.

[fol. 191] The evidence in order of introduction consisted of: (1) A stipulation (2) Depositions of witnesses by Plaintiffs and (3) Documentary evidence read in record or introduced into evidence.

• • • • •

Deposition of A. E. Lyon, a witness for the plaintiffs.

Direct examination.

By Mr. Moye:

Q. Please state your full name and address.

A. My name is A. E. Lyon, and my office address is Third Street Northwest, Washington 1, D.C.

Q. What is your occupation?

A. I am Executive Secretary-Treasurer of the Railway Labor Executives Association.

Q. Are you also Chairman of Railway Labor's Political League?

A. Yes.

[fol. 192] Q. Do you receive remuneration for your services as Chairman of Railway Labor's Political League?

A. No.

Q. I hand you a document entitled "Stipulation of Facts" which is a document attached to a stipulation in the case of Nancy M. Loofer, et al., against Georgia, Southern Florida Railway Company, et al., which is Case No. 1 now pending in the Superior Court of Bibb County, Georgia.

Have you seen that document prior to this time?

A. Yes.

Q. As the Executive Secretary-Treasurer of Railway Labor Executives Association, are you familiar with all of its operations and activities?

A. Yes, I am.

Q. Mr. Lyon, directing your attention to the document entitled "Stipulation of Facts", which I handed you a moment ago, and looking at paragraph 25, will you tell me if the statements in that paragraph are true, accurate, correct and complete?

A. The statements contained in paragraph 25 of the document which I have here, entitled "Stipulation of Facts", are true, accurate, correct and complete.

Q. Are the statements contained in paragraph 26 of that document true, accurate and correct?

A. Yes, they are.

Q. Directing your attention to paragraph 27 of the document, will you tell me if the statements contained in that paragraph are true, accurate and correct?

A. Yes, they are.

Q. You will note that paragraph 27 contains a tabulation or chart, showing assessments made by Railway Labor Executives Association upon the labor unions listed in the tabulation, or chart, for the calendar years from 1954 to 1958.

[fol. 193] Are the amounts listed in each of those years for each of the labor unions shown complete?

A. Yes, they are. I have checked the amounts appearing in that tabulation, or chart, for the years shown, against the records maintained by Railway Labor Executives Association, and the amounts shown are, in fact, assessments upon the labor unions shown, and are the total amounts of such assessments in each of the years shown in the tabulation, or chart, paid by those organizations to the Railway Labor Executives Association.

Mr. Moye: No further questions.

Mr. Edward J. Hickey. (Personal counsel for the witness): No questions.

Mr. Kramer: No questions.

(Deposition concluded.)

Deposition of CYRUS T. ANDERSON, a witness:
tiffs:

Direct examination.

By Mr. Moye:

Q. Please state your name and address.

A. My name is Cyrus T. Anderson. My office is 1000 Connecticut Avenue, Northwest, Washington, D.C.

Q. What is your occupation?

A. I am the Secretary-Treasurer of Railway Labor's Political League, and Assistant to the Chairman of the Railway Labor Executives Association.

Q. I hand you herewith a document entitled "Stipulation of Facts," which is a document attached to a brief in the case of Nancy M. Looper, et al., against Georgia Railway and Florida Railway Company, et al., No. 16,537, now pending in the Superior Court of the County, Georgia.

Q. Have you seen that document prior to this deposition?

A. Yes, I have.

Q. As Secretary-Treasurer of Railway Labor's Political League, are you familiar with all of the activities of that organization?

[fol. 194] A. Yes. As Secretary-Treasurer of the Railway Labor's Political League I am familiar with all of the activities and operations of that organization.

Q. Mr. Anderson, directing your attention to the document entitled "Stipulation of Facts" which I handed you a moment ago, and specifically to the last paragraph, paragraph 25 of that document, is it true that you, as an employee of Railway Labor Executives Association, are employed as an Assistant to the Chairman of the Association?

A. Yes, that is true. I might add that it is also true that as appears in that same paragraph of the document which I have handed me, that I receive a salary for my services to that Association.

Q. Looking now, Mr. Anderson, at paragraph 25 of that document, is it true that you, as well as many other members of the Railway Labor Executives Association, actively and

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fluence all kinds of legislation in which the Chief Executives, members of that Association, deem the members of their organization have an interest?

A. Yes, that is true.

Q. Is it also true, Mr. Anderson, that these attempts to influence legislation are made through personal contact and persuasion with Congressmen and U. S. Senators?

A. Yes, that is true.

Q. Will you look now, Mr. Anderson, at paragraph 28 of that document and tell me if the statements in paragraph 28 are true and correct?

A. I have read the statements, consisting of three paragraphs, designated as paragraph 28, which appear in that document, and all of these statements are true and correct.

Q. Have you read the statements contained in paragraph 29 of that document?

A. Yes, I have.

[fol. 195] Q. Are those statements true and correct?

A. Yes, they are.

Q. Mr. Anderson, have you read the statements in paragraph 30 of that document relating to contributions made to the so-called "educational" fund of Railway Labor's Political League?

A. Yes, I have.

Q. Is each of those statements true, accurate and correct?

A. Yes, sir, each statement made in paragraph 30 of that document is true, accurate and correct.

Q. Directing your attention, Mr. Anderson, to the tabulation or chart which appears as a part of paragraph 30, which shows contributions made to the so-called "educational" fund of Railway Labor's Political League by various organizations named in that chart for the period beginning January 1, 1954, and ending June 13, 1958, are the amounts shown for each of the organizations true, accurate and correct?

A. Yes, sir, they are.

Q. Are they complete, that is, does that tabulation, chart, list all of the contributions made by each of the organizations shown on that tabulation, or chart, for the period shown?

A. Yes, sir. I have checked the amount tabulation against the records maintained by the Labor's Political League and can say that the amounts shown in that tabulation are complete and correct to the best of my knowledge and belief.

Q. Directing your attention now, Mr. Anderson, to paragraph 31 of that document, is the statement in that paragraph true, accurate and correct?

A. Yes, sir, they are.

Q. Directing your attention to paragraph 32 of that document, Mr. Anderson, which paragraphs support given to the collection of money for the [fol. 196] "free" fund of Railway Labor's Political League by the various labor union organizations, are the statements in that paragraph true, accurate and correct?

A. Yes, they are.

Q. Are the statements contained in paragraph 33 of that document true, accurate and correct?

A. Yes, sir, those statements are true, accurate and correct.

Q. Are the amounts of money listed in paragraph 33 of that document complete?

A. The amounts of money in the tabulation referred to in that paragraph are the receipts into the "free" fund of the Labor's Political League from all sources for the years 1954, 1955, 1956, 1957 and the first part of 1958. I have personally checked the amounts listed in paragraph 33 of the records which I maintain for the Railway Labor's Political League, and the amounts stated in the tabulation are the same as those shown on the records maintained by the Labor's Political League. That tabulation is complete and accurately all of the receipts into the "free" fund of the League for the years shown.

Q. Is the statement in paragraph 35 of that document true, accurate, correct and complete?

A. Yes, sir, it is.

Q. Is the statement contained in paragraph 36 of that document true, accurate, correct and complete?

A. Yes, sir, it is.

Q. Is the statement contained in paragraph 37 of that document true, accurate, correct and complete?

A. Yes, sir, it is.

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Q. Is the statement contained in paragraph 38
document true, accurate, correct and complete?

A. Yes, sir, it is.

[fol. 197] Q. Is the statement contained in parag
of that document true, accurate, correct and comple

A. Yes, sir, it is.

Q. Is the statement contained in paragraph 40
document true, accurate, correct and complete?

A. Yes, sir, it is.

Q. Is the statement contained in paragraph 41
document true, accurate, correct and complete?

A. Yes, sir, it is.

Q. Is the statement contained in paragraph 42
document true, accurate, correct and complete?

A. Yes, sir, it is.

Q. I hand you now, Mr. Anderson, a document
"Plaintiffs' First Request for Admissions", which
of the record in this case. The labor union defendan
already admitted the truth and accuracy of the
stated therein. I should like to ask you just a co
questions with respect to that document.

Directing your attention to paragraph 1(c) which
at page 24 and runs through to page 29 of that doc
you will notice the tabulation consists of expen
from the funds of Railway Labor's Political League
years 1956 and 1957.

Is that a complete listing, that is, does that tab
show all the contributions to candidates for federal
or expenditures on behalf of such candidates for
years?

A. Yes, sir, it is. I have checked that listing again
records maintained by RLPL and the listing in th
quest for Admissions is accurate and complete, and
all contributions to candidates for federal office or ex
tures on behalf of such candidates for the period
made from the "free" fund of Railway Labor's P
League.

[fol. 198] Q. Were any contributions or expen
made from the "free" fund of Railway Labor's P
League to persons or for purposes which are not sho
that listing?

A. For the period shown in that Request for Admissions, contributions or expenditures made from the "free" fund of Railway Labor's Political League to persons or for purposes which are not shown on that listing, that listing with the records which are maintained by Railway Labor's Political League, and the listing in that Request for Admissions is true and complete.

Q. I hand you now a document entitled Third Request for Admission of the record in this case. Directing tabulation starting on page 2 and ending on page 6 of that document, you will notice the listing of expenditures from the fund of Railway Labor's Political League for the period from 1953 to 1955.

Is that a complete listing, that is, showing all contributions to candidates and expenditures on behalf of such candidates?

A. Yes, it is. I have checked the records maintained by RLPL and the listing in that Request for Admissions is accurate and complete. All contributions to candidates for federal office and expenditures on behalf of such candidates made from the "free" fund of Railway Labor's Political League.

Q. Were any contributions or expenditures made from the "free" fund of Railway Labor's Political League to persons or for purposes which are not shown on that listing?

A. For the period shown there were no contributions or expenditures made from the "free" fund of Railway Labor's Political League to persons or for purposes which are not shown on that listing. [fol. 199] are not shown on that listing. The listing in that Request for Admissions is true and complete. The listing maintained by Railway Labor's Political League for that period, and the listing in that Request for Admissions is true and correct one.

Mr. Moye: No further questions.

Mr. Edward J. Hickey (Personal and Business): No questions.

Mr. Kramer: No questions.

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l counsel for the wit-

Deposition of JOHN T. O'BRIEN, a witness for
tiffs:

Direct examination.

By Mr. Moye:

Q. Will you please state your full name and

A. My name is John T. O'Brien. My office add
Machinist's Building, 1300 Connecticut Ave., W
D.C.

Q. Are you also known as Jack O'Brien?

A. I am.

Q. By whom are you employed?

A. By the Machinists Non-Partisan Political Le

Q. What position do you occupy?

A. I am coordinator of the Machinists Non
Political League.

Q. In your position as coordinator, are you the
administrative officer of the Machinists Non-Parti
cal League?

A. Yes, I am.

Q. As coordinator, are you familiar with the c
and activities of the Machinists Non-Partisan
League?

A. Yes, I am.

Q. I hand you a document entitled, "Stipulation
the same being a document attached to a stipulat
case of Nancy M. Looper, et al. against Georgia,
& Florida Railway Company, et al., which is
16,537, now pending in the Superior Court of Bib
[fol. 200] Georgia. Have you seen that document
this time?

A. Yes, I have.

Q. Directing your attention, Mr. O'Brien, to p
58 of the document I have just handed you, are t
ments contained in that paragraph true, accurate
rect?

A. Yes, they are.

Q. Are the statements contained in paragraph 5
document true, accurate and correct?

A. Yes, they are.

Q. Are the statements contained in paragraph 60 of that document true, accurate and correct?

A. Yes, they are correct.

Q. Are the statements contained in paragraph 61 of that document true, accurate and correct?

A. Yes, they are.

Q. Are the statements contained in paragraph 62 of that document true and accurate and correct?

A. Yes, they are.

Q. Are the statements contained in paragraph 63 of that document true, accurate and correct?

A. Yes, they are.

Q. Are they complete, that is, does the tabulation, or chart, shown in that paragraph 63 list all of the contributions made by each of the groups or organizations shown on that tabulation, or chart, for the periods shown?

A. Yes, they are.

Yes, I have checked the amounts listed in that tabulation against the records maintained by the Machinists Non-Partisan Political League and say that the amounts shown in that tabulation are complete and accurate.

Q. Are the statements contained in paragraph 64 of that document true, accurate and correct?

A. Yes, they are.

Q. Are the statements contained in paragraph 65 of that document true, accurate and correct?

[fol. 201] A. Yes, they are.

Q. Are the amounts of money listed in that tabulation complete?

A. The amounts of money in the tabulation to which you refer are the receipts into the general fund of the Machinists Non-Partisan Political League from all sources for the years 1954, 1955, 1956, 1957, and the first half of 1958.

I have personally checked the amounts listed in paragraph 65 with the records maintained by the Machinists Non-Partisan Political League and the amounts stated in the tabulation in paragraph 65 are the same as those shown on the records maintained by the Machinists Non-Partisan Political League.

.That tabulation shows correctly and accurately all of the receipts in the general funds of the League for the year shown.

Q. Are the statements contained in paragraph 66 of that document true, accurate and correct?

A. Yes, they are.

Q. Are the statements contained in paragraph 67 of that document true, accurate and correct?

A. Yes, they are.

Q. Are the statements contained in paragraph 68 of that document true, accurate and correct?

A. Yes, they are.

Q. Are the statements contained in paragraph 69 of that document true, accurate and correct?

A. Yes, they are.

Q. Are the statements contained in paragraph 70 of that document true and accurate?

A. Yes, they are.

Q. Are the statements contained in paragraph 71 of that document true and accurate and correct?

A. Yes, they are.

[fol. 202] Q. Are the statements contained in paragraph 72 of that document, true, accurate and correct?

A. Yes, they are.

Q. Are the statements contained in paragraph 73 of that document true, accurate and correct?

A. Yes, they are.

Q. I hand you now, Mr. O'Brien, a document entitled "Plaintiff's First Request for Admission", which is a part of the record in this case. The labor union defendants have already admitted the truth and accuracy of the matters stated therein.

I should like to ask you just a few questions with respect to this document.

Directing your attention to the tabulation in paragraph 1(b), beginning on page 18 and running through page 23 of that document, you will notice the tabulation consists of expenditures from the funds of the Machinists Non-Partisan Political League for the years 1956 and 1957.

Is that a complete listing, that is, does that tabulation show all contributions to candidates for public office or expenditures on behalf of such candidates for these years?

A. Yes, it does. I have checked that listing against the records maintained by MNPL and the listing contained in the plaintiff's first request for admission is accurate and complete. For the years shown in that request there were no contributions to candidates for public office or expenditures in behalf of such candidates which are not shown in this listing and that request for admissions.

Q. Were each of those expenditures shown in that tabulation made from the general funds of the Machinists Non-Partisan Political League?

A. Yes. Each expenditure shown in that tabulation with respect to campaigns for federal office were made from the general funds of the League. Most expenditures show [fol. 203] with respect to campaigns for non-federal office were made with educational funds.

Q. I hand you now, Mr. O'Brien a document entitled "Plaintiff's Substituted Third Request for Admission" which has been filed in this case.

Directing your attention to the tabulations starting at the top of page 6 and ending on the top of page 9 of the document, you will notice that tabulation consists of expenditures from the funds of the Machinists Non-Partisan Political League for the period from 1953 to and including 1955.

Is that a complete listing, that is, does that tabulation show all contributions to candidates for public office or expenditures on behalf of such candidates for those years?

A. Yes, it does. I have checked that listing against the records maintained by MNPL and the listing contained in the Plaintiff's Substituted Third Request for Admission is accurate and complete. For the years shown in that request, there were no contributions to candidates for public office or expenditures in behalf of such candidates which are not shown in the listing in that request for admissions.

Q. Were each of those expenditures shown in that tabulation made from the general funds of the Machinists Non-Partisan Political League?

A. Yes. Each expenditure shown in that tabulation with respect to campaigns for federal office were made from the

general fund of the league. Most expenditures shown with respect to campaign for non-Federal Office were made with educational funds.

Q. Were any contributions or expenditures from the general fund of the Machinists Non-Partisan Political League to persons or for purposes which are not shown on the two listings which I have just handed you, that is, Plaintiff's First and Substituted Third Requests for Admissions?

[fol. 204] A. For the years from 1953 to date, there were no contributions or expenditures made from the general funds of the Machinists Non-Partisan Political League to persons or for purposes which are not shown on these two listings.

I have compared these two listings with the records maintained by the Machinists Non-Partisan Political League. These two listings are complete and a correct and true reflection of the matters shown on the records of the Machinists Non-Partisan Political League.

Q. Mr. O'Brien, I hand you here a document entitled, "How Does MNPL determine who will receive support in Congressional Races," which I ask be marked as Plaintiff's Exhibit 1. [Record Exhibit 2.]

Can you tell me if that document was prepared and distributed by the Machinists Non-Partisan Political League?

A. Yes, it was.

Q. Can you tell me how the printing and distribution of that document was financed and when it was first distributed and in what quantities?

A. The cost of printing and distributing that document came out of the educational fund. There were approximately 10,000 copies of that document distributed upon request of local MNPL's during 1954, 1955 and 1956.

Q. Mr. O'Brien, I hand you here a document entitled, "Shop Steward's Guide for Educating Members on Civic Responsibilities", which I ask be marked as Plaintiff's Exhibit 2. [Record Exhibit 3.]

Can you tell me if that document was prepared and distributed by the Machinists Non-Partisan Political League?

A. Yes, it was.

The Machinists Non-Partisan Political League distributed approximately 10,000 copies of that document during [fol. 205] years 1956 and 1957 upon requests of MNPL's.

Q. How was the cost of the printing and distribution of that document financed?

A. From the educational funds of the League.

Q. I hand you a document entitled, "How a Successful Legislative Committee Works, a Leaders Handbook" which I ask be marked as Plaintiff's Exhibit 3. [Exhibit 4.]

Can you tell me if that document was prepared and distributed by the Machinists Non-Partisan Political League?

A. Yes, the League prepared and distributed approximately 10,000 copies of that document during 1956 and 1957. It was distributed upon requests of local MNPL's.

Q. How was the cost of the printing and distribution of that document financed?

A. The cost came out of the educational fund.

Q. I hand you now a document entitled, "Report of the Recommendations of the National Planning Committee of the Machinists Non-Partisan Political League," which I ask be marked as Plaintiff's Exhibit 4. [Record Book 5.]

Was this piece of literature prepared and distributed by the Machinists Non-Partisan Political League?

A. Yes. The League prepared and distributed approximately 5,000 copies of that document during 1956 and 1958 upon the request of local MNPL's.

Q. How was the cost of the printing and distribution of that document financed?

A. The cost came out of the educational fund.

Q. Mr. O'Brien, in each of your previous answers relating to the funds which bore the cost of the documents which I have just handed you and which have been marked as Plaintiff's Exhibits 1 through and including 4 [Exhibits 2-5], is it correct that the funds you refer to are funds of the Machinists Non-Partisan Political League? [fol. 206] A. Yes, that is correct.

Q. I have no further question.

Mr. Kramer: No question.

Mr. Plato Papps: (Personal Counsel for the Witness):
No questions.

(Deposition concluded.)

Deposition of HAROLD JACK, a witness for the plaintiffs:

Direct examination.

By Mr. McKenna:

Q. Will you please state your full name and address?

A. My name is Harold Jack and my office address is 815—16th Street, N.W., Washington, D.C.

Q. Is that the address of the AFL-CIO office building in Washington?

A. Yes.

Q. What is your occupation?

A. I am the comptroller of the AFL-CIO.

Q. As part of your duties as comptroller of the AFL-CIO, do you supervise and direct the maintenance of the financial books and records of the AFL-CIO?

A. Yes.

Q. Are those books and records in your custody and control as comptroller?

A. Yes.

Q. Is it correct that under the constitution of the AFL-CIO Mr. George Meany is the President of the AFL-CIO and Mr. William F. Schnitzler is the Secretary-Treasurer and that those two are the two executive officers of the AFL-CIO?

A. Yes, that is correct.

Q. How long have they been such executive officers?

A. Since the merger between the AFL and CIO in December 1955.

Q. What positions did Mr. Meany and Mr. Schnitzler hold before that time?

[fol. 207] A. Mr. Meany was president and Mr. Schnitzler was secretary-treasurer of the American Federation of Labor, one of the merging organizations.

Q. I hand you here a document which I have for identification as plaintiff's Exhibit 1 [Exhibit 6], entitled, "Structure of the AFL-CIO," consisting of one page, and containing a chart on the back of the page.

Can you tell me what that document is?

A. It is a document published by the AFL-CIO, signed to show the organizational structure of the AFL-CIO.

Q. Is the original chart on the back of the document a true and correct representation of the line of authority within the AFL-CIO?

A. Yes.

Q. Can you tell me whether any of the Vice Presidents who are members of the Executive Council have been named with the labor union defendants in this case?

A. After examining the caption of petition No. 1, I find that of the Vice presidents who are members of the Executive Council, four hold positions with the labor union defendants in this case, namely: George M. Hayes, president of the Brotherhood of Railway and Steamship Employees; Freight Handlers, Express and Station Employees; A. J. Hayes, president of the International Association of Machinists.

Charles J. McGowan, president emeritus of the International Brotherhood of Iron Ship Builders, Forgers and Helpers.

Joseph D. Keenan, secretary-treasurer of the International Brotherhood of Electrical Workers.

Q. In the chart on the back of Plaintiff's Exhibit 6, you will note a heading "Committees." Can you tell me whether those committees are integral parts of the AFL-CIO or whether they [fol. 208] constitute separate organizations?

A. Those committees are integral parts of the AFL-CIO organization.

Q. How are the activities of those committees financed?

A. The activities of all the committees, except the committee on political education, are financed out of the general fund of the AFL-CIO. With respect to the committee on Political Education a substantial portion of its expenses are financed by the general fund of the AFL-CIO.

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its educational fund from labor unions affiliated with
AFL-CIO. It also receives voluntary contributions
individuals into its political fund, known as the ICL
Individual Contributions Fund.

Q. Mr. Jack, does Mr. Schnitzler hold any position
the Committee on Political Education.

A. He is secretary-treasurer of the Committee on Po-
cal Education.

Q. You have just stated, Mr. Jack that the activities
the Committees mentioned, including the Committee
Political Education and the Department of Legislation,
financed at least in part by the AFL-CIO. Can you
us the source of the financing?

A. That financing comes directly out of the general fu-
of the AFL-CIO.

Q. What is the primary source of the general funds
the AFL-CIO?

A. The primary source of the general funds of the A-
CIO is a per capita tax upon the membership of la-
unions affiliated with the AFL-CIO.

Q. Is it correct that the per capita tax is five cents
member per month for each National and International
affiliate of the AFL-CIO?

[fol. 209] A. That is correct.

Q. How many floors does the AFL-CIO building have?

A. It is an eight floor building with two basements.

Q. Is it correct that the director of the Department
Legislation is Mr. Andrew J. Biemiller?

A. That is correct.

Q. Is he compensated directly by the AFL-CIO?

A. That is correct.

Q. Who appointed Mr. Biemiller director of the Depa-
ment of Legislation.

A. Mr. Meany.

Q. Is it correct that Mr. James L. McDevitt is the direc-
tor of the Committee on Political Education?

A. That is correct.

Q. Who appointed Mr. McDevitt director of the Com-
mittee on Political Education?

A. Mr. Meany.

Q. Is it correct that Mr. Alexander is the director of the Committee on Political Education?

A. That is correct.

Q. Who appointed Mr. Barkan deputy director of the Committee on Political Education?

A. Mr. Meany.

Q. Mr. Jack, I hand you a document of the AFL-CIO Executive Council, 1957, to be marked for identification as Plaintiff's Exhibit 7].

Was that document prepared under the direction of Mr. Meany and Mr. Schnitzler?

A. It was prepared under the supervision of Mr. Meany and Mr. Schnitzler and was approved by the Executive Council of the AFL-CIO prior to its presentation at the convention.

Q. Is it a true and correct copy of the resolution adopted by the Executive Council of the AFL-CIO to the 1957 convention of the AFL-CIO held in Atlantic City, New Jersey, December 5, 1957?

A. Yes.

[fol. 210] Q. As such, is it an official document of the Executive Council and of the AFL-CIO?

A. Yes.

Q. I note on page 17 of that document during the fiscal year of July 1, 1956, under the heading, "Statement of Headquarters and Other Departments—Public Relations," a expenditure of \$649,596.98 under the heading "Radio Programs." Can you tell us whether that amount was the cost of daily radio programs featuring E. J. Connelley and John W. Vandercreek as commentators, as shown on page 314 of the Plaintiff's Exhibit 2?]

A. That is correct.

Q. Is it correct that the broadcasts are made to the general public as well as to reach the AFL-CIO?

A. That is correct.

Q. Mr. Jack, are the American Federation of Labor and AFL-CIO News Official publications of

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he AFL-CIO?

A. Yes. The American Federationist is a month-
zine. The AFL-CIO News, a weekly newspaper, and
are published by the AFL-CIO and are its official
tions.

Q. Is the publication cost of each of those papers
paid for out of the general funds of the AFL-CIO?

A. Yes. A charge is made for subscriptions
periodicals but receipts from subscriptions do not cover
the costs of publication and distribution.

Q. I have no further questions.

Mr. Kramer: That is all.

(Deposition Concluded.)

[fol. 211] Deposition of ANDREW J. BIEMILLER, a
for the plaintiffs.

Direct examination.

By Mr. Moye:

Q. Please state your full name and address.

A. My name is Andrew J. Biemiller. My office is
815 16th Street, N. W., Washington, D. C.

Q. Is that the address of the AFL-CIO office building
Washington?

A. Yes.

Q. What is your occupation?

A. I am director of the Department of Legislation
the AFL-CIO.

Q. How long have you held that position?

A. Since December 20, 1956.

Q. What is the relationship of the Department of
Legislation to the AFL-CIO?

A. The Department of Legislation is a Headquarters
Staff Department of the AFL-CIO.

Q. Are you the executive head of the Department
Legislation?

A. Yes. I am responsible for the operations of the
Department of Legislation of the AFL-CIO. Of course

responsible to Mr. George Meany, AFL-CIO.

Q. How many other employees are Department of Legislation?

A. I have four legislative representatives and also a technical and clerical staff employees.

Q. Do each of you, including your employees mentioned above, receive from the AFL-CIO?

A. Yes.

Q. Are you a registered lobbyist?

A. Yes.

[fol. 212] Q. Are any of the other employees of the Department of Legislation registered lobbyists?

A. Yes, the four legislative representatives are registered lobbyists.

Q. What does it cost to operate the Department of Legislation?

A. From the merger of the AFL and CIO, from July 1, 1955, through June 30, 1956, the end of the first fiscal year of the merged organization, the Department of Legislation incurred expenses in the amount of \$139,071.47. During the second fiscal year, July 1, 1956, to June 30, 1957, the amount mounted to \$139,071.47. During the third fiscal year, July 1, 1957-June 30, 1958, such expenses were \$139,071.47.

Q. Who paid these expenses?

A. All of the expenses which I have mentioned were paid out of the general funds of the Department of Legislation. The Department of Legislation does not have independent income or method of paying expenses. It is a part of the AFL-CIO.

Q. What is the purpose of the Department of Legislation?

A. The purpose of the Department of Legislation is to promote the Legislative program of the AFL-CIO.

Q. Who determines what is the legislative program of the AFL-CIO?

A. The legislative program of the AFL-CIO is determined first by the biennial convention.

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in the absence of action at such conventions by the
tive council of the AFL-CIO between conventions.

Q. Does that program include support for some
legislation and opposition to other proposed legisla-

A. Yes.

Q. Does that program include legislation pending
the Congress of the United States or does it include
tion pending in the legislatures of the several states
territories?

A. The legislative program of the National AFL-
related primarily to Federal legislation but includes
[fol. 213] ited number of state legislative issues of
concern to unions and union members.

Q. Does the Department of Legislation work a-
with respect to legislation pending in the several
as well as that pending in the Congress of the
States?

A. The Department of Legislation is principally
ested in legislation pending or proposed in the Cong-
the United States. Most of the efforts of the Depart-
are in connection with such legislation. However, t-
partment does counsel with and attempt to assist the
ous State AFL-CIO bodies which are primarily respo-
for legislative activities in the several states and terri-

Q. If the AFL-CIO favors certain proposed legis-
what are the duties of the Department of Legislation
respect to such proposed legislation?

A. The duty of the Department of Legislation wi-
spect to such proposed legislation is to attempt activ-
secure the passage of such legislation in the form fa-
by the AFL-CIO.

Q. If the AFL-CIO opposes such proposed legis-
what are the duties of the Department of Legislation
respect thereto?

A. It is the duty of the Department of Legislati-
attempt actively the defeat of such proposed legisla-

Q. Is the Department of Legislation the only depart-
of the AFL-CIO interested in legislative matters?

A. The Department of Legislation is the only Staff
partment which has direct responsibility for legisla-
matters.

Moreover, most of the other Staff Departments or Committees of the AFL-CIO are interested in legislative matters and the Department of Legislation from time to time calls on these other Staff Departments and Committees for special assistance on legislative matters.

Q. In supporting or opposing proposed legislation pending in the Congress of the United States, does the Department of Legislation seek the assistance of other persons or organizations?

A. Yes.

For example, the Department of Legislation often seeks the assistance of labor organizations which are affiliated with the AFL-CIO and every member of those organizations.

Q. How is such assistance solicited by the Legislative Department?

A. The Department of Legislation sends direct letters and action bulletins directed to the officers of the labor organizations affiliated with AFL-CIO. These bulletins are published by the Department of Legislation whenever a broad general response from citizens is required to generate interest in the legislative program of the AFL-CIO or to encourage action within the Congress itself. The bulletins contain concise, detailed information on the background, substance, and status of a bill and request a particular kind of action with respect to that bill.

Q. Does the Department of Legislation cooperate with other organizations or persons in supporting its legislative program before the Congress of the United States?

A. Yes. Obviously where the interests of the AFL-CIO in proposed legislative matters coincides with the interests of other organizations or individuals, it is often necessary and desirable to cooperate with such organizations and individuals in urging mutually desired action with respect thereto.

Q. Who determines such matters of strategy with respect to legislative matters?

A. Basically the strategy to be followed with respect to pending legislation is determined by myself subject to the direction of the executive officers of the AFL-CIO.

However, President Meany has appointed an administrative committee of the Department of Legislation which dis- [fol. 215] cusses the strategy to be followed in sponsoring or opposing proposed legislation and quite frequently the strategy actually followed is that which has been discussed at the meetings of such committee.

Q. Who constitute the administrative committee of the Department of Legislation?

A. The committee is composed of 15 persons, including myself as chairman. Eight of them are National Legislative Representatives of labor unions affiliated with the AFL-CIO and four of them are officers of trade and industrial departments affiliated with the AFL-CIO.

Q. Does it include any persons who are not such National Legislative Representatives of labor unions or officers of trade and industrial departments?

A. Yes. C. T. Anderson, who is also currently a member of that committee, is not the National Legislative Representative of any labor union or an officer of any trade or industrial department affiliated with the AFL-CIO. He is the assistant to the chairman of the Railway Labor Executives Association, as well as secretary-treasurer of Railway Labor's Political League.

Q. Are the legislative proposals in which the Department of Legislation interests itself confined to proposals of direct concern to unions and their members in their roles as unions and union members or do they include other matters of concern to citizens generally.

A. The legislative program of the AFL-CIO, which the Department of Legislation seeks to promote is not confined to legislation or proposed legislation directly affecting unions or union members as unions or union members but covers a broad range of other issues of interest not only to union members but to citizens generally. The range of this program is set forth in the report of the Executive Council [fol. 216] to the Second Convention of the AFL-CIO in 1957 and also in a publication of the Department of Legislation entitled, "Labor Looks at the 85th Congress."

Q. I hand you a document entitled, "Report of the Executive Council to the Second Convention of the AFL-CIO, 1957", which was marked for identification as Plaintiff's

Exhibit No. 2 to the deposition of Mr. Harold Jack [Record Exhibit 7], and ask if that is the document to which you have just referred?

A. Yes.

Q. Directing your attention specifically to the text of the document beginning at page 234, entitled, "National Legislation," I ask you whether the discussion of such National Legislation fairly summarizes the scope of the legislative proposals pending before Congress in which the Department of Legislation has interested itself pro or con?

A. Yes. I think that the discussion of National Legislation appearing in that document constitutes a fair summary of the proposals pending before Congress in relation to which the Department of Legislation has taken action.

Q. I hand you now another document which I ask be marked as Plaintiff's Exhibit No. 1 to your deposition [Record Exhibit No. 8], entitled, "Labor Looks at the 85th Congress," and ask you if that is a true and correct copy of a document prepared and published by the Department of Legislation?

A. The document was prepared by the AFL-CIO Legislation Department under my supervision and direction. The actual printing was handled by the AFL-CIO Department of Publications and is publication No. 59 of that department.

Q. Does that document fairly reflect the position of the AFL-CIO and of the Department of Legislation with respect to legislative matters pending before the 85th Congress?

A. Yes. You will note that the booklet was prepared after the first session of the 85th Congress and reflects our [fol. 217] position with respect to matters which were pending at that session of the 85th Congress. You will note also that pages 31, 32 of the booklet refer to the position of the AFL-CIO and the Department of Legislation with respect to major legislative matters which we expected to come before the second session of the 85th Congress in 1958.

Q. Did the Department of Legislation actively support its position in support of legislative matters discussed in the document by specific action designed to secure the passage of such legislation as it supported and the defeat of such legislation as it opposed?

A. Yes. Of course we devoted more attention to some matters than others. But generally we gave as much support as we could to proposed legislation which we favored and similarly opposed to the extent of our abilities legislation which we wished to see defeated.

Q. You have mentioned that the Department of Legislation sometimes enlists the aid of other headquarters, departments and committees of the AFL-CIO in supporting or opposing proposed legislation.

Does anyone else in the AFL-CIO spend a substantial amount of time on legislative matters?

A. Yes. The executive officers of the AFL-CIO, President Meany and Secretary-Treasurer Schnitzler, spend a substantial part of their time in furtherance of the legislative program of the AFL-CIO.

Q. How much space is provided the Department of Legislation by the AFL-CIO.

A. About one-third of the first floor of the AFL-CIO building.

Q. I have no further questions.

Mr. Kramer: No questions.

(Deposition concluded.)

[fol. 218] Deposition of JAMES L. McDEVITT, a witness for the plaintiffs.

Direct examination.

By Mr. Moye:

Q. What is your name and address?

A. My name is James L. McDevitt and my office address is 815—16th Street, Northwest, Washington, D. C.

Q. Is that the address of the AFL-CIO office building in Washington?

A. Yes.

Q. Are you employed by and do you receive a salary from the AFL-CIO?

A. Yes.

Q. Is Mr. Alexander Barkan employed by and does receive a salary from the AFL-CIO?

A. Yes.

Q. What is your position with the AFL-CIO?

A. I am the Director of the Committee on Political Education of the AFL-CIO.

Q. Is that organization generally referred to as COPE?

A. Yes, that is the usual designation of that committee.

Q. What is COPE?

A. Are you referring now to the national COPE?

Q. Yes. What is the national COPE?

A. The national COPE is a committee of the AFL-CIO.

Q. How much space is provided the Committee on Political Education by the AFL-CIO?

A. Approximately two-thirds of the sixth floor of the AFL-CIO building.

Q. Mr. McDevitt, I hand you a document consisting of a list of names and titles which I ask be marked as Plaintiff Exhibit No. 1 [Record Exhibit 9], and ask you to tell what that document is.

A. This document is a list of the current members of the COPE Administrative Committee.

[fol. 219] Q. What is the COPE Administrative Committee?

A. It is the Committee on Political Education of the AFL-CIO. It is the policy making group which decides matters as whether COPE will seek \$1.00 per contributor in the "COPE Dollar Drive" or \$2.00 per contributor, similar matters of policy.

Q. You will note that many of the names shown on Plaintiff Exhibit No. 1 [Record Exhibit 9] are members of the Executive Council of the AFL-CIO. Am I correct that the COPE Administrative Committee is composed in part of the Executive Council of the AFL-CIO?

A. Yes, that is correct. All of the members of the Executive Council are also members of the COPE Administrative Committee. Of course, as this list shows, there are other members of that committee who are not members of the Executive Council.

Q. Mr. McDevitt I hand you another document consisting of a list of names and titles which I ask be marked as Plaintiff Exhibit No. 2 [Record Exhibit 10], and ask you to tell what that document is.

tiff's Exhibit No. 2 [Record Exhibit 10] and ask you to tell me what that document is.

A. This document is a list of the current members and special guests of the COPE Operating Committee.

Q. What is the COPE Operating Committee and what is its function?

A. That is a committee composed of 20⁰ Secretary-Treasurers of international unions affiliated with the AFL-CIO or the designees of such Secretary-Treasurers. Its function is to make recommendations with respect to the amounts and recipients of financial support of the national COPE. In making its recommendations, the Operating Committee considers the recommendations made to the national COPE by the various AFL-CIO state central bodies or their Committees on Political Education.

[fol. 220] You see, in each campaign except presidential and vice presidential campaigns, the state and area AFL-CIO central bodies or their Committees on Political Education endorse candidates in their particular areas and recommend to the national COPE the amounts of money which they feel the national COPE should contribute to such candidate or to the state central body or its COPE for use in Federal elections in the particular state. The COPE Operating Committee considers all those recommendations and then draws up its own recommendations on how much money should be contributed by national COPE and to which candidates or state central bodies or their Committees on Political Education those contributions should be made. The recommendations of the Operating Committee are subject to approval by the Administrative Committee. However, such recommendations are final as a practical matter.

Q. Will you explain the reference to special guests on page 2 of Exhibit 2 [Record Exhibit 10]?

A. The persons whose names are listed as special guests are regarded as actual members of the Operating Committee of COPE, although some of those persons have not attended more than one meeting, to my knowledge.

Q. Is the amount of money to be contributed to a candidate considered by the Operating Committee in every instance?

A. Generally, I would say it is. Of course, it is more difficult to make recommendations as to the proper allocation of COPE's funds and in instances where a meeting of the Operating Committee is not conveniently scheduled or its members cannot be immediately contacted, such decisions are generally made by President Meany on my recommendations.

Q. How many employees does COPE have?

A. Well, as you know, I am the Director of COPE. I have a Deputy Director, Alexander Barkan. In addition, [fol. 221] are 45 technical and clerical employees of COPE.

Q. How long has COPE been in existence?

A. COPE was formed in December, 1955, when the CIO merged.

Q. Have you been with COPE continuously since that time?

A. Yes.

Q. What was your occupation prior to that merger?

A. For four years prior to the merger, I was Director of Labor's League for Political Education, the AFL component of COPE.

Q. Did the CIO, that is, the Congress of Industrial Organizations, also have a counterpart of COPE?

A. Yes. That was the CIO's Political Action Committee, often called the "PAC".

Q. Who was the Director or corresponding officer of the "PAC" prior to the merger?

A. Mr. Jack Kroll was the "PAC" Director at the time of the merger.

Q. Did Mr. Kroll ever have any identification with COPE?

A. Yes. Until his retirement March 1, 1957, Mr. Kroll and I were co-directors of COPE.

Q. What happened to any funds which the "PAC" or the LLPE had on hand when the merger was effected?

A. The educational and individual contribution funds of those organizations were transferred under the merger to the corresponding funds of COPE, which was formed to take the place of the "PAC" and the LLPE.

Q. What is the education fund of the COPE?

A. The educational fund is a fund or an account into which we put contributions received directly from labor unions affiliated with the AFL-CIO.

Q. Who writes the checks on that fund?

A. Mr. Schnitzler,

[fol. 222] Q. Am I correct in understanding that Mr. Schnitzler, the Secretary-Treasurer of the AFL-CIO, writes the checks on the educational fund of COPE?

A. Well, Mr. Schnitzler is both the Secretary-Treasurer of the AFL-CIO and also the Secretary-Treasurer of COPE, and he writes the checks on that account.

Q. What other officers does the national COPE have?

A. Only Mr. Meany who, in addition to being the President of the AFL-CIO, is also Chairman of COPE.

Q. In addition to the monies received into the educational fund of COPE, what other revenues does COPE have?

A. Well, as I have already indicated, COPE is a committee of the AFL-CIO and many of COPE's expenses are borne by the AFL-CIO.

Q. Can you tell me the amount of the expenses of COPE which have been paid by the AFL-CIO?

A. Well, these expenses are set forth in the report of the Executive Council at the Second Annual Convention of the AFL-CIO.

Q. Mr. McDevitt, on page 19 of that document, which has been identified as Exhibit No. 2 [Record Exhibit 7] to the deposition of Mr. Harold Jack, the following expenses of COPE for the period December 5, 1955, through June 30, 1956, appear:

Salaries	\$207,682.65
Travel Expenses	\$ 73,614.36
Printing	\$ 41,283.21
Postage	\$ 6,650.01
Supplies	\$ 2,207.69
Subscriptions	\$ 2,080.78
Rent	\$ 4,170.18
Field Officers	\$ 3,783.71
Other	\$ 10,899.59

or a total of \$352,372.18.

[fol. 223] Q. Are the expenses so listed a true and correct itemization of the national COPE's expenses for the period which were paid by the AFL-CIO?

A. Yes. Those are the expenses of the national COPE for the period, December 5, 1955, to June 30, 1956, which were paid by the AFL-CIO out of its general fund.

Q. And those expenses were assumed by the national COPE itself?

A. Yes. The figures which you have just mentioned are the expenses incurred by the national COPE for the period. Payment was made directly by the AFL-CIO out of its general fund.

Q. Can you tell me if the following expenses are the expenses of the national COPE which were paid by the AFL-CIO for the fiscal year July 1, 1956, through June 30, 1957?

Salaries	\$201,162
Travel Expenses	\$ 64,388
Printing	\$ 54,407
Postage	\$ 19,286
Supplies	\$ 2,424
Subscriptions	\$ 2,076
Field Offices	\$ 6,683
Other	\$ 15,292

or a total of \$365,722.04?

A. Yes. Those are the figures for the period which were paid by the AFL-CIO out of its general fund.

Q. Can you give us a similar breakdown of the expenses of the national COPE paid by the AFL-CIO for the period of July 1, 1957, through June 30, 1958?

[fol. 224] A. Those figures are as follows:

Salaries	\$331,000
Travel Expenses	\$121,379
Printing	\$ 65,221
Postage	\$ 33,411
Supplies	\$ 5,721
Subscriptions	\$ 3,361
Field Offices	\$ 10,971

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,418.76
,723.38
,364.51
,977.24

Matching Funds \$ 11,106.98
Other \$ 14,068.46

with a grand total of \$596,267.52.

Q. Does the national COPE receive money from other sources?

A. Yes, COPE receives voluntary contributions from members of some of the labor unions affiliated with AFL-CIO and a few other individuals which are placed in a special fund known as the ICF fund. The initials "ICF" refer to individual contributions fund.

Q. You mentioned a while ago the educational fund of COPE. Can you tell us the amounts of money which have been received into COPE's educational fund?

A. COPE has received direct contributions into its educational fund from labor unions affiliated with the AFL-CIO as follows:

During the period February 1, 1956, to June 30, 1956, \$86,763.41 was received into the educational fund.

For the period July 1, 1956, to June 30, 1957, the amount was \$263,305.75.

For the period July 1, 1957, to June 30, 1958, \$907.46 was received into that fund.

Q. Can you tell us the expenditures made by COPE from the educational fund during those same periods?

[fol. 225] A. Yes. During those periods, the total expenditures from the educational fund were as follows:

February 1, 1956, to June 30, 1956, \$20,028.33.

July 1, 1956, to June 30, 1957, \$326,361.37.

From July 1, 1957, to June 30, 1958, \$65,850.51.

Q. You have mentioned the number of the employees of COPE. Are all of those employees located in Washington?

A. No. COPE has eight area directors located outside of Washington, as follows:

Area I. New Haven, Connecticut, covering the states of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, New York, and Rhode Island.

Area II. Office address Pittsburgh, Pennsylvania, covering the states of Pennsylvania, Delaware, New Jersey, Maryland, West Virginia.

For Area III, office address Durham, North Carolina, covering the states of Florida, Georgia, North Carolina, South Carolina, and Virginia.

For Area No. IV, office address Milwaukee, Wisconsin, covering the states of Michigan, Illinois, Indiana, Wisconsin, Minnesota.

For Area No. V, office address Memphis, Tennessee, covering the states of Arkansas, Alabama, Louisiana, Mississippi, Tennessee, Kentucky.

For Area No. VI, office address Modesto, California, covering the states of Idaho, Montana, Washington, North Dakota, and South Dakota.

For Area No. VII, office address Southgate, California, covering the states of Arizona, California, Nevada, and Oregon.

For Area No. VIII, office address Austin, Texas, covering the states of New Mexico, Oklahoma, Kansas, Nebraska.

[fol. 226] COPE also has two women's active branches and one of those has an office in Washington, D.C. The other works out of Okmulgee, Oklahoma. The directors cover generally all states east of the Mississippi River and all states west.

Q. What is the function of the area COPE directors?

A. Well, as you probably know, under the plan of cooperation between the AFL and CIO, there are or will be CIO merged bodies in all states as well as in all district AFL-CIO organizations. Most of the work of many of the area AFL-CIO organizations is in connection with Political Education, just as the national COPE is.

It is the duty of the area COPE directors to work with and assist the state and local COPE directors in which I have just described.

In general, I can say it is the purpose of the area COPE directors to effectuate to the best of the policies of the national COPE organization and encouraging union political activity at

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Q. You say there are or will be AFL-CIO central organizations in each state and that most of those central bodies and many area groups have or will have Committees on Political Education. How are these and area AFL-CIO central bodies financed?

A. I cannot tell you, of course, the details of the finances of each of the state and area central labor bodies. Each of them received a substantial part of its revenue from periodic per capita taxes and fees paid by the unions which are affiliated with them.

Q. How are the Committees on Political Education in the state and area central bodies financed?

[fol. 227] A. Each of the state and area Committees on Political Education is financed in part by the COPE drives in which we seek individual voluntary contributions. In general the state and area Committees on Political Education receive one-half of the amount collected in the areas, and the national COPE receives the other one-half. Some of the state and area Committees on Political Education are also financed in part by the general fund of the AFL-CIO state and area central labor bodies of which they are committees. Sometimes this is done by the state central labor bodies assuming certain expenses of the Committee on Political Education, just as the national COPE assumes certain expenses of the national COPE. It is sometimes done on the basis of a direct grant of funds.

In addition, some local unions affiliated with the state or area central body make direct grants to the Committee on Political Education of that central body.

In some cases, national COPE makes grants from ICF funds to the state central body or its Committee on Political Education for use in campaigns within the particular state for Federal elective officers. In such cases the state central body or its Committee on Political Education is free to use such money for contributions in support of any one or more candidates in such campaigns.

Finally, some state and area Committees on Political Education are financed by a direct per capita tax

by the Committee on Political Education unions affiliated with the state or area which the Committee on Political Education.

I understand that this method of financing is included in the bylaws for state and area [fol. 228] Political Education suggested COPE is incorporated in the COPE committee bylaws in Arizona, Delaware, Maryland, Montana, Oklahoma, Virginia and possibly others. I don't know about.

I should add that most of the state and area committees on Political Education sometimes raise funds in various ways, such as picnics, and so forth. Generally their revenues are obtained from one or more sources I have outlined in addition to the amounts collected in the COPE Dole Fund.

Q. What is the function of the state and area committees on Political Education?

A. Generally, they have the same functions as the National Committee on Political Education. They operate on a state or local basis. The "How to Win" is published by the National Committee on Political Education to assist state and area committees on Political Education to perform more effectively their functions as are described therein.

Q. Who decides which candidates in a campaign shall be endorsed by the AFL-CIO?

A. In presidential and vice presidential elections, the determination of the candidates who will be endorsed, if any, is made by the AFL-CIO. In all other elections that determination is made by the AFL-CIO central bodies and their Committees on Political Education.

For example, the AFL-CIO central body and its Committee on Political Education in a major area will endorse candidates for major, state, county and other city offices. In congressional elections that determination is made upon recommendation of the AFL-CIO central body and its Committee on Political Education, if there is one, in the particular area.

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district and by subsequent action with respect
[fol. 229] the AFL-CIO state central body and
mittee on Political Education. In campaign
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paings involving other state offices, such as fo
of Attorney General, and so forth, that determ
made by the AFL-CIO state central bodies and
mittees on Political Education. State and ar
bodies and their Committees on Political Edu
recommend that the national COPE contribute
amount of money to the candidate so endorsed

Q. From what funds are contributions made
COPE to candidates for state or local office?

A. No contributions have been made to cand
local office. In the case of state office, contribu
been made only to gubernatorial candidates. In
tional COPE made contributions to gubernat
didates in seven states. These contributions v
out of COPE educational funds.

Q. You have just mentioned the fact that CO
take an interest in a particular congressional
Does COPE ever contribute funds to congress
didates?

A. Yes. COPE frequently makes financial co
to candidates for congressional office. Such co
are made from the ICF.

Q. Does COPE contribute funds to candidates
dent, Vice President, and the United States Se

A. COPE makes financial contributions to
for all those offices. Such contributions are mad
ICF fund.

Q. Please tell us the amount received into the
of the national COPE for the periods which
discussed.

A. Receipts into the ICF fund for the period
5, 1955, to June 30, 1956, were \$80,314.67. For
July 1, 1956, to June 30, 1957, receipts were \$
[fol. 230] From July 1, 1957, to June 30, 19
ceipts into the ICF fund were \$346,825.50

Q. Are financial contributions to candidates
eral office made from the ICF exclusively?

A. Yes. National COPE makes financial contributions to candidates for Federal office solely out of the ICF. Funds sent to state central bodies or their COPEs for use in Federal elections are likewise derived from the ICF.

It also uses ICF exclusively to pay for literature issued for the specific purpose of supporting candidates for Federal office and for other activities directed to that purpose and to pay the cost of seeking contributions to the ICF, including the cost of literature issued for the specific purpose of appealing for contributions to the ICF.

During the last two months preceding the biennial elections for Federal office and for a short period of time after such elections, the salaries and travel expenses of all of COPE's personnel and other operating expenses, except for space provided by the AFL-CIO, are paid out of ICF. Salaries and expenses of any national COPE personnel engaged in the campaign of a particular candidate for a Federal office which may be held in a special election in a particular state in off election years are all paid from the ICF. The national COPE contributions out of the ICF to candidates are limited to candidates for Federal elective office—President, Vice President, U. S. Senator and U. S. Representative.

Q. Can I take it from your last answer that all other disbursements by national COPE are made from its educational fund or are paid for the national COPE by the AFL-CIO out of its general funds?

A. Generally speaking, that is correct.

[fol. 231] Q. I hand you the first and substituted third requests for admissions which the plaintiffs in this case have served upon the defendants other than the railroads. Will you examine those documents?

A. Yes.

Q. In examining those requests for admissions, did you note that those requests call for certain admissions with respect to funds expended by COPE and LLPE from 1953 to date?

A. Yes.

Q. I should point out, Mr. McDevitt, that the response to plaintiff's first request for admissions indicated that there were two errors in that document. The first of those errors appears on page 15 of that document in the 8th item from the bottom of that page which shows a \$2,500 contribution on October 26, 1956, to "Dodd for Senate Campaign Fund." The response indicates that the correct figure is \$1,500.

Q. The second correction relates to the last item of paragraph 1(a), appearing on page 17. That item indicates a \$500 contribution to the Alleghany County Democratic Committee, which the response indicates was not made.

With those two corrections, Mr. McDevitt, are the contributions by COPE and LLPE listed in those two requests for admissions accurate?

A. Yes, to the best of my knowledge they are contributions which actually were made by COPE and LLPE.

Q. Do those requests list all the contributions to candidates for Federal office which COPE and LLPE made during the periods listed?

A. Yes, and certain other disbursements are also shown.

Q. Does COPE ever support financially candidates for the office of President and Vice President of the United States?

A. Yes. During the 1956 Presidential campaign the General Board of the AFL-CIO endorsed presidential and [fol. 232] vice presidential candidates of the Democratic Party, and the COPE organization actively supported those candidates. Financial contributions in the amount of \$56,500 were made to the campaigns of those candidates out of the ICF and many employees of COPE actively campaigned on their behalf and attempted to secure as large a vote for those candidates as possible among the members of labor unions affiliated with the AFL-CIO and their families, friends and neighbors.

Q. What other activities did COPE engage in during the 1956 campaigns for Federal office?

A. During those campaigns, COPE distributed millions of pieces of literature.

Q. I hand you here a document entitled "Social Security

—What Ike Said Then,” which I ask to be marked as Plaintiff's Exhibit No. 3 [Record Exhibit 11].

Was this piece of literature prepared and distributed by COPE during the 1956 campaign?

A. Yes. COPE distributed 494,000 copies of that exhibit during the 1956 campaign.

Q. How was the cost of that document financed?

A. From the ICF fund.

Q. Mr. McDevitt, I hand you here a document entitled “Has Nixon Reformed?”, which I ask to be marked for identification as Plaintiff's Exhibit No. 4 [Record Exhibit 12]. * * * Can you tell me if that document was prepared and distributed by COPE during the 1956-campaign?

A. Yes, it was.

Q. Can you tell me how the printing and distribution of that document was financed?

A. That cost came out of the ICF fund.

[fol. 233] Q. I hand you a copy of a document entitled “How your Senator Voted” and “How Your Representative Voted,” which I ask be marked for identification as Plaintiff's Exhibit No. 5 [Record Exhibit 13]. * * * Can you tell us what that document is?

A. That is the voting record to which I have referred. You will note that voting record which you handed me was labeled on the inside “Minnesota”. That indicates that it was distributed in the State of Minnesota. Similar voting records covering the same issues were prepared for each of the other states of the Union.

Q. Who paid for those voting records?

A. COPE educational fund or account was used to pay for such voting records.

Q. Were they distributed in each of those other states?

A. Yes, they were sent in bulk to the AFL-CIO state central bodies to be distributed to their affiliated local unions for ultimate distribution to the members of such local unions.

Q. When were they so distributed in bulk?

A. During August and early September, 1956.

Q. Who selected the issues referred to in these voting records?

A. The headquarters staff of COPE in consultation with the Department of Legislation.

Q. Who determined whether a particular vote on a given issue was regarded as right or wrong?

A. It was determined by the headquarters staff of COPE in consultation with the Department of Legislation, based upon the position taken by the AFL-CIO on the particular legislation at the time of the vote on such legislation.

Q. How many copies of voting records were distributed? [fol. 234] A. 10,169,000.

Q. I hand you here a document which I ask be marked for identification as Plaintiff's Exhibit No. 6 [Record Exhibit 14], entitled "United States Senators and Representatives Vote—1947-1956". Can you tell me what that document is? . . .

A. That is a master voting record of all Senators and Representatives as of 1956. The issues forming the voting records are in all instances identical.

Q. Can I look at this last voting record and ascertain from the appropriate state therein what would appear on the inside of the individual state voting record?

A. Yes.

Q. Is it a correct summary that those voting records are based on the position taken by a Representative or Senator not only with respect to measures of specific applicability to collective bargaining or the labor movement but also his position with respect to other issues of general interest to the entire public and not merely to labor unions or union members?

A. That is correct.

Q. Is it correct then that in supporting or opposing a given candidate for the office of United States Senator or Representative the determination is made not solely with respect to such candidate's position on proposed legislation dealing with collective bargaining or trade unionism, but takes into account his position on proposed legislation of general public interest.

A. To answer that accurately, I have to distinguish between candidates for President or Vice President of the United States, on the one hand, and for Congress, on the other. The decision whether the AFL-CIO should support

or oppose a particular candidate for President or President was made on the occasion of the 1956 election [fol. 235] which was the only one that had taken place since the AFL-CIO merger by the AFL-CIO General Board.

It is my opinion that the members of the General Board or most of them, took account of the positions of the presidential and vice presidential candidates on general as well as strictly labor issues in reaching their decision that the AFL-CIO should endorse a particular candidate for President and for Vice President. However, that is simply a matter of opinion.

As regards candidates for the Senate or House of Representatives, I have already told you how the determination whether a particular candidate shall be endorsed by the AFL-CIO is made. I cannot generalize with regard to whether these endorsements reflect consideration of a candidate's position on both general and specifically labor issues or only the latter. I can say, however, that the national COPE urges that consideration be given to the positions of candidates for Congress on general as well as specifically labor issues. If a candidate who has been endorsed by the AFL-CIO for Congress through the action of the appropriate state or local AFL-CIO organization seeks a contribution to his campaign from the national COPE or if the state or local AFL-CIO organization makes a contribution on his behalf, then the national COPE in deciding whether to make a contribution has considered the candidate's position on general as well as on specific labor issues in making such contribution.

Q. I hand you here a booklet entitled "How to Contribute" which I ask be marked for identification as Plaintiff's Exhibit No. 7 [Record Exhibit 15]. * * *

Is it true that that booklet was prepared and published by COPE?

A. Yes, and it is distributed by sale primarily through the leadership of state and local AFL-CIO labor organizations [fol. 236] and their Committee on Political Education.

Q. Can you tell us out of what fund the cost of preparing and distributing that booklet came?

A. The initial cost was borne by the general funds of the AFL-CIO and the educational fund of COPE, but that cost has been recouped through sales of that booklet to local COPEs, affiliates of the AFL-CIO and others.

Q. I hand you two documents which I ask be marked Plaintiffs' Exhibits 8 and 9 and which appear to be reprints of Chapters 3 and 6, respectively, of the book "How to Win," which has been marked as Plaintiff's Exhibit No. 7 [Record Exhibit 15]. * * *

Q. Does COPE reprint such chapters of that book?

A. Yes.

Q. What fund bears the publication costs of those reprints?

A. The cost of publication of Chapter 6 was borne by the general fund of the AFL-CIO and the educational fund of COPE and Chapter 3 was paid for from the ICF fund.

Q. Can you tell us how many copies of the entire booklet "How to Win," which has been marked for identification as Plaintiff's Exhibit No. 7 [Record Exhibit 15] have been printed and distributed?

A. It is a booklet which was originally published by the former PAC, and I don't know how many copies were published and distributed by PAC. But COPE printed and distributed 10,000 copies between May, 1956, and May, 1958.

Q. Can you tell us how many copies of Chapter 3 "How to Conduct a COPE Dollar Drive" have been printed and distributed?

A. There were 200,000 copies printed and distributed in 1957 and 1958 to affiliates of the AFL-CIO.

[fol. 237] Q. Can you tell us how many copies of Chapter 6 "How to Register Voters" have been printed and distributed?

A. 34,000 in 1956; 91,000 in 1957; and 50,000 in 1958, all of which were distributed to affiliates of the AFL-CIO.

Q. I hand you here a series of documents consisting of 53 documents in all, which I ask be marked for identification as Plaintiff's Exhibit No. 10 [Record Exhibits 16 through 68] being entitled "Political Memos from COPE." I should note that Exhibit No. 10 includes COPE memos

numbered 4, 5, 6, 7, 9, 12 through 19, and 21 for the year 1956 and memos 4 through 25 for 1957; and 1 through 1958. * * *

Can you tell me whether those documents were published and distributed by COPE?

A. Yes, they were.

Q. Out of what fund did the cost of publication and distribution come?

A. Out of the general funds of the AFL-CIO.

Q. How many copies of each issue are printed and distributed?

A. 84,000 copies of each issue which were distributed to the affiliates of the AFL-CIO.

Q. Who writes those memos?

A. Dick Dashiell, who is COPE's publicity director.

Q. I hand you now a series of documents which I have marked for identification as Plaintiff's Exhibit [Record Exhibits 69 through 79] entitled "Notes of COPE."

I should note that Exhibit No. 11 includes notes of COPE bearing numbers 1 through 5 for the year 1956, a total of five documents, and bearing numbers 1, 2, 3, 4, 6, and 7 for 1958, an additional six documents, or eleven documents in all, in Exhibit No. 11. * * *

Will you tell me whether those documents were published and distributed by COPE and out of what funds?

[fol. 238] A. Yes, they are published and distributed by COPE and are paid for out of AFL-CIO general funds.

Q. How many copies of each were printed and distributed?

A. 7,500 of each issue, which were distributed to the affiliates of the AFL-CIO.

Q. I next hand you a series of documents entitled "Annual Report," which I ask be marked for identification as Plaintiff's Exhibit No. 12 [Record Exhibits 80 through 89].

I should note that Exhibit No. 12 consists of 12 COPE reports for 1957 from January through December 1957, 12 COPE reports for 1958 from January through December 1958, 12 COPE reports for 1959 from January through September of 1959, being nine such reports for 1959, a total of 21 such reports in all in that exhibit. * *

Can you tell me whether those COPE Reports were published and distributed by COPE?

A. That is correct.

Q. Out of what fund did their publication and distribution cost come?

A. Out of the AFL-CIO general funds.

Q. How many copies of each were printed and distributed?

A. 7,500 of each issue which were distributed to affiliates of the AFL-CIO and their publications and other labor papers.

Q. I hand you here a document entitled "1956 Handbook," which I ask be marked for identification as Plaintiff's Exhibit No. 13 [Record Exhibit 101] and ask whether that document was published and distributed by COPE?

• • •

A. Yes, it was.

Q. How many copies were published and distributed?

A. 4,850.

Q. What fund bore the publication and distribution costs?

A. The educational fund paid the cost of publishing and distributing that document and only a part of that cost was recouped from sales.

[fol. 239] Q. I hand you here a document entitled "America Must Have," which I ask be marked for identification as Plaintiff's Exhibit 14 [Record Exhibit 102] and ask you if that leaflet was published and distributed by COPE?

A. Yes, it was.

Q. What fund paid for the publication and distribution costs of that leaflet?

A. The ICF fund.

Q. How many copies of that leaflet were printed and distributed?

A. One million copies were printed and all copies will be distributed in 1958.

Q. I next hand you a leaflet entitled "We're In This Together," which I ask be marked for identification as Plaintiff's Exhibit No. 15 [Record Exhibit 103].

Did COPE publish and distribute that document?

A. Yes, it did.

Q. How many copies were printed and distributed?

A. Two million copies were printed and distributed in bulk to the state and area COPE organizations. I hope that some of them would get into the hands of the members, and I think it is reasonable to assume that they did.

Q. What fund paid for the publication and distribution of that document?

A. The cost was paid out of AFL-CIO general fund.

Q. I next hand you a document entitled "The Future Now," which I ask be marked for identification as Plaintiff's Exhibit No. 16 [Record Exhibit 105].

Did COPE publish and distribute that document?

A. Yes, it did.

Q. How many copies were printed and distributed?

A. 500,000.

Q. What fund paid for the publication and distribution of that document?

A. The ICF fund.

[fol. 240] Q. I hand you a document entitled "Have COPE Insurance?" which I ask be marked for identification as Plaintiff's Exhibit No. 17 [Record Exhibit 105]. . . .

Did COPE publish and distribute that document?

A. Yes, it did.

Q. How many copies were printed and distributed?

A. Two million copies were printed and all copies were distributed in 1958.

Q. Out of what fund did the cost of publication and distribution come?

A. The ICF fund.

Q. I next hand you a document entitled "That's The Way," which I ask be marked for identification as Plaintiff's Exhibit No. 18 [Record Exhibit 105].

Did COPE publish and distribute that?

A. Yes, it did.

Q. How many copies were printed and distributed?

A. One million were printed and all copies were distributed in 1958.

Q. Out of what fund did the cost of publication and distribution come?

A. The ICF fund.

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Q. Does COPE refer to itself as the political arm of the AFL-CIO?

A. Yes. COPE has referred to itself as the political arm of the AFL-CIO.

Q. How many candidates for U. S. Senator received contributions from COPE in 1956?

A. In 1956, the AFL-CIO Committee on Political Education contributed financial support to 18 United States senatorial candidates of the Democratic Party and 10 U. S. senatorial candidates of the Republican Party. These contributions were in the amounts set forth in plaintiff's first request for admissions.

[fol. 241] Q. How many candidates for the U. S. Congress received contributions from COPE in 1956?

A. In 1956, the AFL-CIO Committee on Political Education contributed financial support to 125 candidates for Congress of the Democratic Party and to two candidates for Congress of the Republican Party. These contributions were in the amounts set forth in plaintiff's first request for admissions.

Q. How many gubernatorial candidates received financial support from COPE in 1956?

A. In 1956, the AFL-CIO Committee on Political Education contributed financial support to seven gubernatorial candidates of the Democratic Party and to no gubernatorial candidates of the Republican Party. The amounts to each candidate range from five thousand to two thousand dollars.

Q. How many candidates for U. S. Senator received financial support from LLPE in 1954?

A. In 1954, the National Labor's League for Political Education, the AFL predecessor of COPE, contributed financial support to 25 United States senatorial candidates of the Democratic Party and to one United States senatorial candidate of the Republican Party. These contributions were in the amounts set forth in plaintiff's submitted third request for admissions.

Q. How many candidates for U. S. Representative received financial support from LLPE in 1954?

A. In 1954, the National Labor's League for Political Education, the AFL predecessor of COPE, contributed

financial support to 36 congressional and Democratic Party and to two Congressional the Republican Party. These contributions amounts set forth in the plaintiff's substitute quest for admissions.

Mr. Moyer: No further questions.

Mr. Kramer: No questions.

(Deposition concluded.) * * *

[fol. 288]

IN THE SUPERIOR COURT OF BIBB COUNTY

Case No. 16,537

NANCY M. LOOPER, S. B. STREET, et al., as Parties,
Intervening Plaintiffs,

—VS.—

GEORGIA SOUTHERN AND FLORIDA RAILWAY COMPANY;
ERN RAILWAY COMPANY; CINCINNATI, NEW
TEXAS PACIFIC RAILWAY; ALABAMA GREAT
RAILROAD COMPANY; NEW ORLEANS AND
RAILROAD COMPANY; CAROLINA AND NORTH
WAY COMPANY; NEW ORLEANS TERMINAL
JOHNS RIVER TERMINAL COMPANY; E
NORTHEASTERN RAILROAD COMPANY; INTERNATIONAL
SOCIATION OF MACHINISTS; INTERNATIONAL
OF BOILERMAKERS, IRON SHIP BUILDERS AM
AMERICA; INTERNATIONAL BROTHERHOOD OF
DROP FORGERS AND HELPERS SHEET M
INTERNATIONAL ASSOCIATION; INTERNATIONAL
HOOD OF ELECTRICAL WORKERS; BROTHERHOOD
CARMEN OF AMERICA; INTERNATIONAL B
FIREMEN, OILERS, HELPERS, ROUNDHOUSE
SHOP LABORERS; BROTHERHOOD OF RAILW
SHIP CLERKS, FREIGHT HANDLERS, EXPRESS
EMPLOYEES; BROTHERHOOD OF MAINTENANCE
EMPLOYEES; ORDER OF RAILROAD TELEGRAPH

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TY, GEORGIA

Petitioners and

COMPANY; SOUTH-
NEW ORLEANS AND
GREAT SOUTHERN
ND NORTHEASTERN
RTHWESTERN RAIL-
NAL COMPANY; ST.
; HARRIMAN AND
INTERNATIONAL AS-
ONAL BROTHERHOOD
RS AND HELPERS OF
OD OF BLACKSMITHS
METAL WORKERS
ATIONAL BROTHER-
ERHOOD OF RAILWAY
L BROTHERHOOD OF
OUSE AND RAILWAY
AILWAY AND STEAM-
XPRESS AND STATION
NTENANCE OF WAY
EGRAPHERS; BROTH-

[fol. 289]

ERHOOD OF RAILROAD SIGNALMEN OF AMERICA; NATION
ORGANIZATION MASTERS, MATES AND PILOTS; NATION
MARINE ENGINEERS BENEFICIAL ASSOCIATION; AMERICAN
TRAIN DISPATCHERS ASSOCIATION; RAILROAD YARDMASTERS
OF AMERICA; L. C. RITTER, R. H. HUBBARD, NORMAN
DUGGER, J. R. WESTBROOK, JOHN PELKAFFER, T. B. STAN-
MAN, C. J. BRICE, C. D. BRUNS, W. G. ROBERTS, HENRY
DENT, J. J. DUFFY, B. R. ACUFF, T. J. ROBERTS, IRVING
BARNEY, W. W. DYKE, W. B. CHAPMAN, ANTHONY M. MURPHY,
J. H. DESOTELL, LEWIS CRAIG, GEORGE M. HARRISON, G. W. BALL,
LINK, J. D. AVERA, J. P. ALEXANDER, G. W. BALL, R. L. LANFAIR,
F. G. GARDNER, H. R. DUENSING, E. V. P. JESSE CLARK,
E. C. MELTON, F. O. DASHER, B. T. H. JOHN M. BISHOP,
W. L. BALL, WILLIAM O. HOLMES, O. BRAESE, R. M. CRAWFORD,
T. W. GRIMMETT, M. G. SCHMIDT, H. E. IVEY, T. J. DAME,
and CHARLES J. MACGOWAN as Defendants.

STIPULATION—August 14, 1958

Whereas, this cause has been pending in this Court since
June 5, 1953; and

Whereas, depositions of the following witnesses have
been taken by the plaintiffs, and intervening plaintiffs, on
[fol. 290] a period of many months:

Name	Title or Position	Labor Union District
A. H. Banks, Jr.	Secretary- Treasurer	Local Lodges 2010 Brotherhood Maintenance Employes
W. O. Hearn	Local Chairman	Lodge 354—Brotherhood Railway of America
Eugene F. Phillips	Financial Secretary	Lodge 354—Brotherhood Railway of America

Name	Title or Position
4. Jack A. Bennett	Local Chairman
5. Herman H. Buckner	Local Chairman
6. B. M. Hines	Secretary- Treasurer
7. W. C. Hogg	Secretary
8. Harry Magbee	Treasurer
[fol. 291]	
9. Mrs. L. N. Durden	Financial Secretary
10. James F. Collier	Local Chairman
11. D. S. Lemons	Local Chairman and Legislative Representa- tive
12. James E. Hyde	Local Chairman and Treasurer

Labor Union Defense	Name	Title or Position	Labor Union D
Lodge 632—International Brotherhood of Electrical Workers	J. F. Guldenschuh	Local Chairman	Local 943—Brotherhood of Railway Steamship Clerks, Freight Handlers, Express and Station Employees
Local 1—International Association of Machinists			
Local 632—International Brotherhood of Electrical Workers	H. B. Wallace	Financial Secretary and Treasurer	Local 943—Brotherhood of Railway Steamship Clerks, Freight Handlers, Express and Station Employees
Lodge 102—Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees	Cleveland Turner	Treasurer	Local 2—Brotherhood of Railway Carmen of America
Local 1—International Association of Machinists	W. H. Gibson	Treasurer	Local 102—Brotherhood of Railway Steamship Clerks, Freight Handlers, Express and Station Employees
Local 2—Brotherhood of Railway Carmen of America	292]		
Local 2—Brotherhood of Railway Carmen of America	Ollie L. McDaniel	Secretary-Treasurer	Local 598—International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers
Local 102—Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees	H. W. Walters	Secretary-Treasurer	Local 260—Ship Workers' International Association
Local 49—Brotherhood of Railroad Signalmen of America	H. E. Towery	Secretary-Treasurer	Local 2—International Brotherhood of Iron and Steel Builders, Blacksmiths and Forgers and H

Name	Title or Position	Labor Union Defendant
20. J. C. Hambright	Chairman	Georgia State Legislative Committee— Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees
21. A. S. Tiller	Vice-Chairman	Georgia State Legislative Committee— Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees
22. William M. Crim [fol. 293]	Secretary	Georgia State AFL-CIO
23. Wyant L. McConnell	Secretary-Treasurer	Georgia State Legislative Committee— Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees
24. Irvin L. Barney	National Legislative Representative	Brotherhood Railway Carmen of America
25. A. E. Lyon	Executive Secretary and Chairman	Railway Labor Executives' Ass'n. Railway Labor's Political League
26. Mrs. Alma Wieckowski	Office Manager	Railroad Yardmasters of America;

and

Whereas, the Labor union defendants have, upon request of the plaintiffs and intervening plaintiffs, produced various documents, papers and records for use as evidence in this case (some of which are attached as exhibits to the "Stipulation of Facts" and made a part thereof); and

Whereas, the plaintiffs and intervening plaintiffs have served upon the labor union defendants three lengthy Requests for Admissions to be used in evidence, which Requests have been responded to in writing by said labor union defendants, said Requests and Responses now constituting a part of the record in this case; and

Whereas, upon motion of the plaintiffs and intervening plaintiffs, Commissioners have been appointed to take [fol. 294] the testimony of, and subpoenas have been served upon, the following additional persons:

Name	Title or Position	Organization	Location
Cyrus T. Anderson	Secretary-Treasurer	Railway Labor's Political League	Washington, D. C.
R. J. Woodman	Fifth Vice-President	The Order of Railroad Telegraphers	St. Louis, Missouri
B. H. Steuerwald	Grand Lodge Representative	Brotherhood of Railroad Signalmen of America	Chicago, Illinois
A. J. Hayes	President	International Association of Machinists	Washington, D. C.
Eric Peterson	Secretary-Treasurer	International Association of Machinists	Washington, D. C.

Name	Title or Position	Organization	Location
6. Gordon M. Freeman	President	International Brotherhood of Electrical Workers	Washington, D. C.
7. Joseph W. Keenan	Secretary-Treasurer	International Brotherhood of Electrical Workers	Washington, D. C.
8. Robert Byron	President	Sheet Metal Workers' International Assoc.	Washington, D. C.
[fol. 295]			
9. Edward F. Carlough	Secretary-Treasurer	Sheet Metal Workers' International Association	Washington, D. C.
10. Rubin Levin	Editor	Newspaper "LABOR"	Washington, D. C.
11. W. P. Neville	Secretary-Treasurer	Newspaper "LABOR"	Washington, D. C.
12. Joseph B. Springer	President	American Train Dispatchers Assoc.	Chicago, Illinois
13. Arthur Covington	Secretary-Treasurer	American Train Dispatchers Assoc.	Chicago, Illinois
14. Jesse Clark	President	Brotherhood of Railroad Signalmen of America	Chicago, Illinois
15. C. L. Bromley	Secretary-Treasurer	Brotherhood of Railroad Signalmen of America	Chicago, Illinois

	Name	Title or Position	Organization	Location
ington, C.	M. G. Schoch	President	Railroad Yardmasters of America	Chicago, Illinois
ington, C.	W. F. Meyer	Secretary-Treasurer	Railroad Yardmasters of America	Chicago, Illinois
ington, C.	Michael Fox	President	Railway Employees' Dept., AFL-CIO	Chicago, Illinois
	296]			
ington, C.	B. E. Leighty	President	The Order of Railroad Telegraphers	St. Louis, Missouri
ington, C.	E. M. Mosier	Secretary-Treasurer	The Order of Railroad Telegraphers	St. Louis, Missouri
ington, C.	T. C. Carroll	President	Brotherhood of Maintenance of Way Employees	Detroit, Michigan
ington, C.	Frank L. Noakes	Secretary	Brotherhood of Maintenance of Way Employees	Detroit, Michigan
ago, Illinois	Ernest H. Benson	National Legislative Representative	Brotherhood of Maintenance of Way Employees	Detroit, Michigan
ago, Illinois	George M. Harrison	President	Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees	Cincinnati, Ohio

Name	Title or Position	Organization	Loc
25. George M. Gibbons	Secretary-Treasurer	Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes	Cincinnati, Ohio
26. A. J. Bernhardt	President	Brotherhood of Railway Carmen of America	Kansas, Missouri
[fol. 297]			
27. T. S. Howieson	Secretary-Treasurer	Brotherhood of Railway Carmen of America	Kansas, Missouri
28. William A. Calvin	President	International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers	Kansas, Kansas
29. Homer E. Patton	Secretary-Treasurer	International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers	Kansas, Kansas
30. William Schnitzler	Secretary-Treasurer	AFL-CIO	Washington, D. C.
31. Andrew Biemiller	Legislative Director	AFL-CIO	Washington, D. C.

and

Location
Cincinnati,
Ohio

Whereas, upon motion of the plaintiffs and intervening plaintiffs, Commissioners have been appointed to take the testimony of, but subpoenas have not yet issued or been served upon, the following additional persons:

Name	Title or Position	Organization	Location
George Meany	President	AFL-CIO	Washington, D. C.
[298] Anthony Matz	President	International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers	Washington, D. C.
James L. McDewitt	Director	Committee on Political Education, AFL-CIO	Washington, D. C.
Jack O'Brien	Coordinator	Machinists' Non-Partisan Political League	Washington, D. C.

and

Whereas, by order dated May 9, 1958, this Court directed each labor union defendant to produce in Macon, Georgia, on July 9, 1958, together with an officer or an agent of such defendant, competent and prepared to testify fully under oath with respect to the identity, nature, contents, accuracy, source and purpose thereof, the following, related to the period from June 15, 1953, to date:

"... any and all books, records, papers, documents, books of original entry, checkbooks, ledgers, vouchers, correspondence files, minutes, diaries, memoranda,

circulars, printed materials, brochures, in the possession or control of such defendant and its showing or related to moneys paid by the member of each of the respective organizations or affiliates of and the purposes for which moneys received by each of the respective organizations were or are being [fol. 299] expended, including any and all moneys paid by each of the respective organizations to other organizations or individuals and the purposes for which payments are being made, or were made, or related to the political or legislative activities conducted on behalf of said defendant."

or, in lieu of such production and testimony in Georgia, the Court provided that each such defendant might elect to have its production and testimony with respect thereto take place at the principal office of each defendant and before a duly qualified Commissioner of the Court at a time agreeable to counsel for all parties, later than June 30, 1958; and

Whereas, it appears that in the normal course of proceedings for the trial of this case many more months will be required in the completion of the depositions and discovery; and

Whereas, the labor union defendants have submitted to the plaintiffs and intervening plaintiffs that most of the material facts in this case could be adduced and concluded through a mutual stipulation in writing, and the plaintiffs and intervening plaintiffs have agreed thereto subject to the approval of the Court; and

Whereas, both plaintiffs and intervening plaintiffs and the defendants, have agreed to waive a jury trial and to let the trial judge of this Court, without a jury to pass on the facts and finally decide all issues of fact and law, and have agreed to exert their best efforts to have this case tried and finally disposed of as speedily as possible;

[fol. 300] Now Therefore, the plaintiffs and intervening plaintiffs and all the defendants agree:

1. That each of the statements in the attached "Stipulation of Facts" is true, accurate and correct;

2. That the labor union defendants will furnish to plaintiffs and intervening plaintiffs such of the documents described in paragraph 79 of the attached "Stipulation of Facts" (or true and correct copies thereof) as are specified in said paragraph to be furnished by the labor union defendants on the date of execution of this Stipulation;

Plaintiffs and intervening plaintiffs will specify to the labor union defendants not later than 15 days before the date set for the trial of this case the documents or portions thereof described in paragraph 79 of the attached "Stipulation of Facts" or identified as exhibits in the depositions referred to in paragraph 3 hereof which plaintiffs and intervening plaintiffs intend to offer in evidence at the trial.

Not later than 5 days before the date set for trial of this case the labor union defendants may specify to plaintiffs and intervening plaintiffs the whole or any additional portions of any specified document of which plaintiffs and intervening plaintiffs intend to offer only a part and which may be explanatory of the portion or portions offered by the plaintiffs and intervening plaintiffs and which said labor union defendants intend to offer in evidence in the event the plaintiffs and intervening plaintiffs offer the related portions of the document;

3. That the attached "Stipulation of Facts" and Exhibits [fol. 301] attached thereto; Plaintiffs First, Substituted Second and Substituted Third Requests for Admissions and the defendants' responses thereto; the depositions of A. E. Lyon and C. T. Anderson authenticating those paragraphs of the attached "Stipulation of Facts" applicable to Railway Labor Executives Association and Railway Labor's Political League; the deposition of Jack O'Brien authenticating those paragraphs of the attached "Stipulation of Facts" applicable to the Machinists' Non-Partisan Political League; the depositions of Harold Jack, Andrew Bjemiller and James L. McDevitt of the American Federation of Labor and Congress of Industrial Organizations; and the documents (or such portions thereof as may be offered in evidence as set forth in numbered paragraph 2 hereof), and

testimony or other evidence relating to the claims of the plaintiffs or intervening plaintiffs in this litigation for damages and for the return of periodic dues and assessments collected from them by the labor unions of the defendants who give counsel for the defendants at the time of notice of their intention to offer such testimony or evidence, shall serve as a Stipulation of Facts. The reading and condensation of depositions and documents and other written materials in this case, and as the evidence upon which this case shall be tried and decided, shall be the judge of this Court upon all issues of fact and shall be heard out a jury, and no opposition shall be offered to the introduction or admission in evidence of the same, and the said "Stipulation of Facts", the Exhibits thereto, the documents or portions thereof, and the numbered paragraph 2 hereof and in paragraph [fol. 302] "Stipulation of Facts", and the documents referred to in this numbered paragraph 3, as specified herein, no further depositions or discovery in this case shall be sought by any of the parties hereto.

4. That the attached "Stipulation of Facts" is agreed to only for the purpose of this litigation and for the higher courts, and no statement or admission therein shall be offered in evidence or used in any proceeding; and

5. That all parties may argue in this and in any higher court the significance and effect of all the evidence herein.

This 14th day of August, 1958.

Plaintiffs, Intervening Plaintiffs, and the Defendants Represent: Gambrell, Harlan, Russell, Moye, E. Smythe Gambrell, Charles A. Moye, Jr., Kenna; and T. Arnold Jacobs, T. A. Jacobs, Defendants, Intervening Plaintiffs, and the Defendants Represent.

For all Defendants Other Than the Defendants: David L. Mincey, David L. Schoene and Kramer, By M. Kramer.

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Jr., Terry P. M
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the Class the

the Railroad De
David L. Miner
Kramer.

The labor union defendants and the plaintiffs
ing agreed to the foregoing Stipulation, the
road Defendants agree: For the Railroad De-
dants: Georgia Southern & Florida Railway Com-
pany, Bloch, Hall, Groover & Hawkins, By Charles
[fol. 303] J. Bloch, Southern Railway Company,
Charles J. Bloch, By Harris, Russell, Wells
& Watkins; Cincinnati, New Orleans and Texas
Pacific Railway, Bloch, Hall, Groover & Hawkins,
By Charles J. Bloch; Alabama Great Southern
Railroad Company, By Charles J. Bloch;
New Orleans and Northeastern Railroad Company,
Bloch, Hall, Groover & Hawkins, By Charles
Bloch; Carolina and Northwestern Railway Com-
pany, Bloch, Hall, Groover & Hawkins, By Charles
J. Bloch; New Orleans Terminal Company, By
Hall, Groover & Hawkins, By Charles J. Bloch;
St. Johns River Terminal Company, Bloch, Hall,
Groover & Hawkins, By Charles J. Bloch; Har-
man and Northeastern Railroad Company, By
Hall, Groover & Hawkins, By Charles J. Bloch.

[fol. 304]

STIPULATION OF FACTS

1.

The two agreements attached hereto as Exhibits 1
(and hereinafter collectively referred to as the "Union
shop agreement") are true and correct copies of the agree-
ments referred to in the petition herein and the answers
of the railroad defendants herein and constitute the agree-
ments which were executed on the dates and by the parties
as stated in said agreements and which have been and are
currently in force and effect, on the railroad defendants.

2.

Each of the plaintiffs and each of the intervening parties
was an employee of one of the railroad defendants
herein (collectively constituting the Southern Railway

System) in a craft or trade covered by the agreement at the commencement of this litigation.

3.

Some of the plaintiffs and intervening plaintiffs now, and never have been, members of any of the defendant labor union organizations (their status based on the supersedeas bond).

4.

Some of the plaintiffs and intervening plaintiffs at the commencement of this litigation had been members of some of the defendant labor union organizations for one reason or another, terminated such membership but have since been compelled against their will to join the union shop agreement, in order to continue their [fol 305] employment, to become members of some of the defendant labor unions (or in the case of Loo and Fritschel, post a supersedeas bond).

5.

There are a substantial number of other railroad defendants who similarly have been compelled by the union shop agreement, against their will, to become members of the defendant labor union organizations in order to maintain their employment.

6.

There were a substantial number of employees of the railroad defendants whose employment was terminated against their wishes, although their services were necessary to the factory, by reason of the enforcement of the union shop agreement and the refusal of such persons to join the labor union defendants.

7.

The plaintiffs and intervening plaintiffs adequately represent for the purposes of this litigation.

y the union shop
litigation.

plaintiffs are not
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Looper, Ferguson,

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this litigation the

interests of the employees and former employees
railroad defendants specified in the two preceding
graphs, as well as those whose status as members
of those two groups has not as yet been finally deter-
these being all those employees or former employees
railroad defendants affected by and opposed to the
shop agreement who also are opposed to the use
periodic dues, fees and assessments which they have
are and will be required to pay to support ideological
and political doctrines and candidates and legislative
grams set forth in this Stipulation of Facts and the
tions referred to in the Stipulation attached hereto,
[fol. 306] other purposes other than the negotiation,
tenance and administration of agreements concerning
of pay, rules and working conditions, or wages, hours
or other conditions of employment or the handling of
matters relating to the above.

8.

Each of the plaintiffs, and intervening plaintiffs
the class they represent received notice, both from the
road defendant employer and the labor union defendant
applicable to his or her craft or trade, that unless he
became a member of the appropriate labor union defendant
within 60 days of the date he or she first performed
uncompensated service for the railroad defendant, or within
60 days of the effective date of the union shop agreement,
whichever is the later, such employment would be termi-
nated and such employee dismissed pursuant to the union
shop agreement.

9.

The plaintiffs and intervening plaintiffs and the
represented by them who are currently employed by
railroad defendants (excepting plaintiffs Looper, Ferguson
and Fritschel, for whom supersedeas bonds are in effect)
would have been discharged from the employment by the
railroad defendants employing them, under the terms of
the union shop agreement, had they not become members
of the labor union defendant applicable to their craft or trade.

trade; and plaintiffs Looper, Ferguson and others have been discharged from their employment by the railroad defendant employing them, under the union shop agreement, if they had not been members of the labor union defendant applicable to the trade or posted a supersedeas bond.

[fol. 307]

10.

Each of the labor union defendants has been authorized to represent, to appear for, and to submit evidence on behalf of its membership in this litigation.

11.

None of the plaintiffs, or intervenors, have voluntarily become a member of any of the labor union defendants.

12.

The union shop agreement referred to above was negotiated by the labor union defendant with the railroad defendants without any authority of the employees of such railroad defendants or the craft or trade applicable to each labor union defendant other than such authority as might be derived from the labor union defendant's being the collective representative of employees of such railroad defendant in the craft or trade for the purposes of the union shop agreement. From the dates and as set forth in paragraph 10, the usual processes of the defendant unions and the collective bargaining policy were followed. The union shop agreement did not, involve any opportunity to express their wishes or respect to such negotiation and execution of such an agreement, or any opportunity to ratify or reject the same.

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collective bargaining
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the Railway Labor Act
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t was contemplated, or
ishes pro or con with
ation of the union shop
ratify or reject such

[fol. 308]

13.

The form of certification of each of such labor
defendants as has been the subject of formal certi-
as statutory representative, is in substance as follow

"... The National Mediation Board hereby
that the [labor organization] has been duly des-
and authorized to represent [a specified craft
poyees performing work in a specified craft], c-
ees of the [defendant] Railway, for the purp-
the Railway Labor Act."

The authority of those labor union defendants the
not been the subject of formal certification is, with
to their respective crafts or trades, the same as that
labor union defendants which have been the subj-
such formal certification with respect to their res-
crafts or trades.

The dates from which the labor union defendant
been the collective bargaining representative for the
spective crafts or trades under the Railway Labor
relation to the railroad defendants are as follows:

Organization	Railroad Defendant	
International Association of Machinists	All	Ju
International Brotherhood of Boilermakers, Iron Ship Builders, Black- smiths, Forgers and Helpers	All	Ju
[309] United Metal Workers	All	Ju
International Association of Electrical Workers	All	Ju
International Brotherhood of Railway Car- men of America	All	Ju

Labor Organization

Railroad Defendant

Date

International Brotherhood
of Firemen & Oilers

All

June 21, 1934

Brotherhood of Railway and
Steamship Clerks, Freight
Handlers, Express and
Station Employees

All except Carolina
and Northwestern
Railway
Carolina and North-
western Ry.

June 21, 1934

Brotherhood of Maintenance
of Way Employees

All

June 21, 1934

The Order of Railroad
Telegraphers

All

June 21, 1934

Brotherhood of Railroad
Signalmen of America

*Southern Railway
Co.

June 12, 1934

*Cincinnati, N.O. &
T.P. Ry.

June 12, 1934

*Alabama Great
Southern

June 12, 1934

*New Orleans &
Northeastern

June 12, 1934

[fol. 310]

Cincinnati, N.O. &
T.P. Ry.

Nov. 13, 1934

New Orleans & North-
eastern

Dec. 17, 1934

All others

June 21, 1934

International Organization
Masters, Mates & Pilots
of America

Southern Railway

June 21, 1934

*Camp cooks (Signal and electrical departments).

Labor Organization	Railroad Defendant	Date
Marine Engineers Beneficial Association	Southern Railway	June 21, 1934
American Train Dispatchers Association	All	June 21, 1934
Railroad Yardmasters of America	Georgia Southern & Florida Ry	Jan. 12, 1938
	Cincinnati, N.O. & T.P. Ry.	Jan. 12, 1938
	New Orleans and Northwestern	Jan. 12, 1938
	New Orleans Terminal	Jan. 12, 1938
	**Southern Railway	June 21, 1934

14.

Each of the plaintiffs and intervening plaintiffs was employed for many years by one of the railroad defendants prior to the execution of the union shop agreement hereinabove referred to, and that also is true of many others of [fol. 311] the class represented by the plaintiffs and intervening plaintiffs, and none of such persons had notice prior to entering into an employment relationship with such railroad defendant that union membership would at any time be required as a condition of employment or continued employment.

15.

The periodic dues currently required to maintain membership in each of the labor union defendants by employees engaged in the craft or trade applicable to each labor union defendant on the railroad defendants are as follows:

** Elected and certified February 28, 1956 to continue as collective bargaining representative for the purposes of the Railway Labor Act by vote of 72 for Railroad Yardmasters of America, 14 for Brotherhood of Railroad Trainmen, and 4 void ballots.

International Association of Machinists	\$2.00-\$4.50 per month
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers	\$6.00-\$6.75 per month
Sheet Metal Workers' International Association	\$3.50-\$5.00 per month
International Brotherhood of Electrical Workers	\$2.90 per month
Brotherhood Railway Carmen of America	\$2.00-\$3.35 per month
International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers	\$3.50 per month
Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees	\$3.00 per month
[fol.312]	
Brotherhood of Maintenance of Way Employees	\$8.25-\$9.00 per quarter
The Order of Railroad Telegraphers	\$18.00 semi-annually
Brotherhood of Railroad Signalmen of America	\$10.00 per quarter
International Organization of Masters, Mates and Pilots	\$25.00 per quarter
National Marine Engineers' Beneficial Association	\$10.00 per month
American Train Dispatchers' Association	\$60.00 per year
Railroad Yardmasters of America	\$48.00 per year

16.

The initiation fees required by the labor union defendants of prospective members who are employees of the railroad defendants in the craft or trade applicable to each labor union defendant and which those plaintiffs, intervening plaintiffs and the class represented by them who have never belonged to the labor union defendant applicable to his or her craft or trade, have been or will be required to pay, are as follows:

	Current Required Initiation Fees
International Association of Machinists	\$10.00-\$25.00
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers	0-\$35.00
[fol. 313] Sheet Metal Workers' International Association	\$25.00-\$50.00
International Brotherhood of Electrical Workers	\$25.00
Brotherhood Railway Carmen of America	\$12.50-\$25.00
International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers	\$20.00
Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees	\$10.00
Brotherhood of Maintenance of Way Employees	\$ 5.00
The Order of Railroad Telegraphers	\$10.00

	Current Required Initiation Fees
Brotherhood of Railroad Signalmen of America	\$10.00
International Organization of Masters, Mates and Pilots	\$200.00
National Marine Engineers' Beneficial Association	\$250.00
American Train Dispatchers' Association	\$10.00
Railroad Yardmasters of America	0

17.

The reinstatement fees currently required by the union defendants of employees of the railroad defendants engaged in the craft or trade applicable to each union defendant who once belonged but do not now to any of the labor union defendants and which [fol. 314] plaintiffs, intervening plaintiffs and the represented by them who once belonged but at the time of the enforcement of the union shop agreement do not belong to the labor union defendant applicable to his or her craft or trade have been or will be required to pay are as follows:

	Current Required Reinstatement Fees
International Association of Ma- chinists	\$10.00-\$25.00
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers	0-\$37.50
Sheet Metal Workers' Interna- tional Association	\$15.00-\$35.00
International Brotherhood of Electrical Workers	\$25.00

Current Required
Reinstatement Fees

Brotherhood Railway Carmen of America	\$12.50-\$25.00
International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers	\$20.00
Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees	\$15.00
Brotherhood of Maintenance of Way Employees	\$ 5.00
The Order of Railroad Telegraphers	\$10.00
Brotherhood of Railroad Signalmen of America	\$20.00
International Organization of Masters, Mates and Pilots	\$200.00
{fol. 315}	
National Marine Engineers' Beneficial Association	\$250.00
American Train Dispatchers' Association	0
Railroad Yardmasters of America	0

18.

Whenever in this Stipulation reference is made to collection of periodic dues, fees and assessments from members of the labor union defendants, (for example, in paragraphs 15, 16 and 17) such reference is intended to include any payment of periodic dues, fees and assessments by employees for whom any such labor union defendant is or was the statutory bargaining agent for purposes of the Railway Labor Act where such payment is, was, or will be required by the union shop agreement.

Plaintiffs, intervening plaintiffs and the class they represent have been, are and will be required to pay periodic dues, fees and assessments of substantially the amount set forth in paragraphs 15, 16 and 17.

19.

The periodic dues, fees and assessments which plaintiffs, intervening plaintiffs and the class they represent have been, are and will be required to pay under the terms of the union shop agreement hereinabove referred to have been, are being, and will be used in substantial part for purposes other than the negotiation, maintenance and administration of agreements concerning rates of pay, rules and working conditions, or wages, hours, terms and conditions [fol. 316] other conditions of employment, or the settlement of disputes relating to the above, but to support ideological and political doctrines and candidates which plaintiffs, intervening plaintiffs, and the class represented by them have been, were, are, and will be opposed to and not willing to support voluntarily.

20.

The mechanism by which the periodic dues, fees and assessments required to be paid under the terms of the union shop agreement were, are and will be used in substantial part to support ideological and political doctrines and candidates for public office which plaintiffs, intervening plaintiffs, and the class represented by them, have been, are, and will be, willing to support, is as set forth in this Stipulation.

A substantial portion of the periodic dues, fees and assessments required of plaintiffs, intervening plaintiffs and the class they represent, or which will be so required, has been, is being and will be retained by, or remitted to, the individual local lodge of the labor union defendants, which each such person paid and will be required to pay periodic dues, and has been, is being, and will be, used to support legislative activity in the legislatures of the State or territory covered by the membership of such local lodge, including miscellaneous general legislation not confined to legislation involving the negotiation, maintenance and administration of agreements concerning rates of pay, rules and w

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conditions, or wages, hours, terms and other conditions of employment, or the handling of disputes relating to the above and, except in Wisconsin, New Hampshire, Pennsylvania, Indiana, Texas and Iowa, to extend substantial financial support to candidates for public office in the executive [fol. 317] legislative and judicial branches of the state and local governments in the locality of the local union.

21.

Some of the legislative and political activities referred to in the preceding paragraph are carried out by some of the individual local lodges of the labor union defendants and in some situations, such activities were, are, and will be carried out on a cooperative basis, the local lodges or several of the defendant unions cooperating (not only between themselves, but also with local lodges of labor union not defendants in this litigation, through State, district and local AFL-CIO central bodies and their Committees on Political Education as well as ad hoc committees), and in some instances the financial support for such local legislative and political activities is derived not only from the local lodge organizations but also from direct grants from the general dues funds of the national or grand lodge organization of a particular labor union defendant.

In each instance where "general fund" or "general dues fund" or like phrase is employed in this Stipulation of Facts (except where used in reference to the Machinists Non-Partisan Political League, where the phrase is used to denote the "political" fund which is derived from individual contributions), it refers to the fund or account, or that part thereof, derived and maintained from periodic dues, fees and assessments of the members of such organization.

22.

A substantial proportion of the periodic dues, fees and assessments collected by the labor union defendants from [fol. 318] their members was, is, and will be transmitted to or retained by, their respective national or grand lodge organizations.

23.

At the national level, many of the labor dants maintain death benefit funds from dues r individual members and transmitted by the lo tions. In some instances, death benefits are out of the general funds of such national labor dant. In some instances, such benefits are pay the beneficiaries of members in good standing several years ago, although such payments ar general funds contributed to by members wh aries would not be eligible for such relief.

24.

Each of the national labor union defendant ate of the AFL-CIO, a national federation of izations, and pays to the AFL-CIO a per cap rently amounting to 5¢ per member per m amounts or their substantial equivalent have b since the merger of the American Federati and the Congress of Industrial Organizations i 1955, and a substantially equivalent per capit the future be paid to the AFL-CIO by the defendants, such tax being paid in each ins the general funds of each of the labor union From the effective date of the union shop agr the merger of the AFL and CIO, all the labor dants (except the National Marine Engineer Association) were members of the AFL and [fol. 319] per capita taxes in a substantial amount to that organization. The National gineers' Beneficial Association was affiliated v during the period just mentioned and during th per capita taxes on its membership in a substant lent amount to the CIO. The total amounts p labor union defendant to the AFL-CIO are as the labor union defendants' Response to par Plaintiffs' Substituted Second Request for The labor union defendants, as affiliates of th receive the literature distributed by that orga its committees, to its affiliates.

The Railway Labor Executives' Association is a incorporated association and labor organization composed of the chief executive officer of each of the labor union defendants and the chief executive of each of the following organizations which are not defendants in this case:

Hotel and Restaurant Employees' and Bartenders International Union (AFL-CIO);

Brotherhood of Locomotive Firemen and Engineers (AFL-CIO);

Brotherhood of Sleeping Car Porters (AFL-CIO)

Brotherhood of Railroad Trainmen (AFL-CIO)

Order of Railway Conductors & Brakemen (Independent)

American Railway Supervisors Association (AFL-CIO);

Switchmen's Union of North American (AFL-CIO) and

Brotherhood of Locomotive Engineers (Independent)

Michael Fox, President of the Railway Employees' Association, AFL-CIO is a non-voting member of said association [fol. 320] and A. E. Lyon is its Secretary-Treasurer. C. T. Anderson is an employee thereof who acts as assistant to the Chairman, both Lyon and Anderson are remunerated for their services.

A principal activity of the Railway Labor Executives' Association is in the field of federal legislation. The Association, as an organization acting through its Chief Executive, Secretary-Treasurer, other members, and C. T. Anderson, actively attempts to influence all kinds of legislation which the Chief Executives, members of said Association deem the members of their organizations have an interest in. Through personal contact and persuasion with Congress and U. S. Senators.

The activities of the Railway Labor Execution have been, are, and will be financed through assessments levied upon the above mentioned organizations represented by their chief executive officers and upon the general dues funds of those organizations. Assessments upon the labor union defendants over the years have been as follows:

Labor Union Defendants	1954	1955	1956
International Association of Machinists	\$17,952.00	\$15,493.50	\$17,406.00
[fol. 321]			
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers	*5,989.50 *1,798.50	6,748.50	5,775.00
Sheet Metal Workers' International Association	4,785.00	4,108.50	4,644.00
International Brotherhood of Electrical Workers	4,785.00	4,108.50	5,419.50
Brotherhood Railway Carmen of America	27,934.50	24,057.00	27,078.00
International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers	5,989.50	5,098.50	6,955.50

* Two separate organizations prior to 1955.

			1954	1955	1956	1957
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Railway Labor's Political League ("RLPL") is an organization composed of the same individuals comprising the Railway Labor Executives Association. W. P. Kennedy, President of the Brotherhood of Trainmen, Guy L. Brown, Grand Chief of the Brotherhood of Locomotive Engineers, and J. E. Anderson, President of the Order of Railway Conductors. A. E. Lyon is Chairman of said League. J. E. Anderson is its Secretary-Treasurer. C. J. Anderson receives remuneration for his services.

The members of RLPL are automatically members of the labor union defendants or Railway Labor Executives' Association; AFL-CIO.

The members of RLPL actually make decisions as to how its funds shall be expended, and make all campaign contributions shall be made. The members are active partisans of the major party receiving the preponderance of financial contributions to RLPL.

Railway Labor's Political League was organized for the specific purpose of engaging in political activity with the election of candidates to public office. The organization maintains two funds—one the "educational" fund and the other the so-called "operational" fund. The Railway Labor's Political League received, and continues to receive direct grants into its "educational" fund from the general funds of the union defendants and the Railway Labor Executives' Association. The monies in the "operational" fund are used, except in Wisconsin, [fol. 324] Pennsylvania, Indiana, Texas, and other States, to support candidates for public office at the State and local level; for advertising for publicity to support candidates on television; for operating the Railway Labor's Political League, including the salaries of the paid employees; for operation, office expense, supplies, etc.); and for other activities in supporting candidates (who

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making the decisions as to which candidates will be made, in private or political party real contributions from

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e State and local level;
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administrative expenses
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and for miscellaneous
whom plaintiffs, inter-

The administration, operation and maintenance "free" fund activities of Railway Labor's Political League has been, is and will be financed and supported by expenditures from the "educational" fund of Railway Labor's Political League derived from the general dues of the labor union defendants.

30.

Contributions have been made to the so-called "national" fund of Railway Labor's Political League as follows:

	1954	1955	1956	1957
et Metal orkers' ernational ssociation	0	0	\$ 33.00	
[325] ernational rotherhood of ectrical orkers	0	\$ 24.00	0	\$ 26.0
herhood ilway Carmen America	\$ 9,790.53		5,573.75	290.0
national rotherhood of remen, Oilers, lpers, Round- se and Rail- y Shop orers	0	0	0	203.0

	1954	1955	1956	1957	Jan-June 1958
Brotherhood of Railway & Steamship Clerks, Freight Handlers, Ex- press and Station Em- ployes	\$ 1,952.00	\$ 24.00	\$ 600.00	0	\$ 300.00
Brotherhood of Maintenance of Way Employes	5,480.00	0	5,700.00	0	
Railway Labor Executives' Association	60,000.00	60,000.00	45,000.00	75,000.00	20,000.00
AFL-CIO (COPE)	0	0	2,000.00	0	

Substantial contributions to the "educational" fund were also received from various local lodges of the labor union [fol. 326] defendants but such contributions are to (sic) numerous to list here.

Each of the contributions made by the labor union defendants was made from its general dues fund, with the exception of a few contributions which were made by individuals to Railway Labor's Political League through their union representatives and were deposited in the "educational" fund rather than the "free" fund because they were made out on a union check by the union representative transmitting the contribution.

31.

Collections for the "free" fund of Railway Labor's Political League, from which direct contributions to the campaigns of Presidential, Vice Presidential, Congressional and U. S. Senatorial candidates were and are made, were and are made through persons designated as "deputy treasurers" of Railway Labor's Political League, they in fact being the chief financial officers of the labor union defen-

dants except for the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers and the Brotherhood of Railway Carmen of America where the "deputy treasurers" are the editors of the periodicals published by said organizations.

32.

The labor union defendants and a substantial number of their local lodges, with the exception of the International Association of Machinists, Masters, Mates and Pilots, and National Marine Engineers Beneficial Association, have supported, support, and will support the collection of money for the so-called "free" fund of Railway Labor's Political [fol. 327] League through the donation of space in periodicals published by such labor union defendants which is used to induce their members to contribute to such fund; and through the efforts of a substantial number of their executive personnel at the national and local levels, who urge that each and every member of such organizations contribute money to the "free" fund of Railway Labor's Political League, and time at lodge meetings of such defendants devoted to appeals for such contributions.

The defendant International Association of Machinists has supported, supports, and will support the collection of money for the so-called "general" fund of the Machinists Non-Partisan Political League through the donation of space in periodicals published by said labor union defendant which is used to induce its members to contribute to said fund and through the efforts of a substantial number of its executive personnel at the national and local levels, who urge that each and every member of said organization contribute money to the so-called "general" fund of the Machinists Non-Partisan Political League, and time at lodge meetings of said defendant devoted to appeals for such contributions.

33.

Actual collections of the monies in the "free" fund of Railway Labor's Political League were, are and will be made by the officers or shop stewards of the labor union

defendants and were, are and will be transmitted to the "deputy treasurer" of the Railway Labor's Political League for the organization concerned, most of whom are the chief financial officers of said organizations, and are then transmitted by said "deputy treasurers" to Railway Labor [fol. 328] Political League. Receipts into the "free" fund of Railway Labor's Political League from all sources during the last five years (according to reports filed with the Clerk of the House of Representatives for the years 1954 and 1955 and according to the books and records of Railway Labor Political League for 1956 to date) were as follows:

1954	\$ 86,003.26
1955	5,546.75
1956	102,526.77
1957	7,553.93
1958 (to June 13)	21,537.39

34.

The class represented by plaintiffs and intervening plaintiffs includes members of both major political parties.

35.

In 1956, Railway Labor's Political League contributed substantial financial support to the National Committee of one major national political party, and not to the other.

36.

In 1954, Railway Labor's Political League contributed substantial financial support to the National Committee of one major national political party, and not to the other.

37.

In 1956, Railway Labor's Political League contributed substantial financial support to 8 U. S. Senatorial candidates of one major political party and to 0 U. S. Senatorial candidates of the other major political party.

[fol. 329]

38.

In 1954, Railway Labor's Political League contributed substantial financial support to 13 U. S. Senatorial candidates of one major political party and to 0 U. S. Senatorial candidates of the other major political party.

39.

In 1956, Railway Labor's Political League contributed substantial financial support to 64 Congressional candidates of one major political party and to 4 Congressional candidates of the other major political party.

40.

In 1954, Railway Labor's Political League contributed substantial financial support to 56 Congressional candidates of one major political party and to 6 Congressional candidates of the other major political party.

41.

In 1956, Railway Labor's Political League contributed substantial financial support to 3 gubernatorial candidates of one major political party and to 0 gubernatorial candidates of the other major political party.

42.

In 1954, Railway Labor's Political League contributed substantial financial support to 2 gubernatorial candidates of one major political party and to 0 gubernatorial candidates of the other major political party.

43.

The funds expended by the labor union defendants for political activities as set forth in this Stipulation of Facts are substantial, and the proportionate amounts of the [fol. 330] periodic dues, fees and assessments which are being paid, or which will be required to be paid, by the plaintiffs and intervening plaintiffs and the class they

represent are also substantial, and the amounts of dues which are and will be used ultimately for political purposes are also substantial.

44.

The plaintiffs, intervening plaintiffs, and the class represent have been and are opposed to the use of money by the labor union defendants, Railway Labor Executives Association, Railway Labor's Political League, Machinists Non-Partisan Political League, the American Federation of Labor and Congress of Industrial Organizations, and the Committee on Political Education of the AFL-CIO which they have been, are and will be required to pay in dues, fees and assessments for the endorsement and support of the legislation, ideologies and political doctrines and candidates for public office which have been and will be supported and endorsed by the union defendants, Railway Labor Executives Association, Railway Labor's Political League, Machinists Non-Partisan Political League, the American Federation of Labor and Congress of Industrial Organizations, or the Committee on Political Education of the AFL-CIO as set out in the Stipulation of Facts, or for other purposes other than the negotiation, maintenance and administration of agreements concerning rates of pay, rules and working conditions, wages, hours, terms and other conditions of employment or the handling of disputes relating to the above.

45.

The money which has been, is being, and will be used by plaintiffs, intervening plaintiffs and the class [fol. 331] represent as dues, fees, and assessments has been, is being and will be used in substantial support of candidates for the offices of President, Vice President, U. S. Senators and Congressmen and the campaigns as described elsewhere in this Stipulation of Facts and for direct contributions to candidates for State and local offices, as described elsewhere in this Stipulation of Facts.

46.

Each of the labor union defendants (except the Masters, Mates and Pilots and National Marine Engineers Beneficial Association) was and is a part owner of an organization known as Railway Labor's Cooperative and Educational Publishing Society, which publishes a weekly newspaper, "Labor". The following non-defendants are also part owners of said newspaper: Brotherhood of Locomotive Firemen and Enginemen; Order of Railway Conductors and Brakemen; Brotherhood of Locomotive Engineers; Switchmen's Union of North America; American Railway Supervisors Association.

47.

"Labor" derives its principal financial support from subscriptions to the newspaper without which subscriptions none of its activities would be possible.

48.

The general funds of the labor union defendants, except for the American Train Dispatchers Association, have been, are, and will be used to purchase subscriptions to "Labor" for officers and members of such labor union defendants. Such subscriptions constitute a substantial portion of "Labor's" revenues.

[fol. 332]

49.

Free space in "Labor" has been, is and will be used to induce contributions to the funds of Railway Labor's Political League, and the Committee on Political Education (COPE).

Substantial portions of each issue are devoted by "Labor" to legislative subjects and, during election periods, to political subjects, dealing with the election of candidates to public office.

50.

Also in the newspaper "Labor", including the columns therein, the reporting is of a non-objective type and is

designed to influence the readers thereof to a particular political philosophy espoused by that party but to which plaintiffs, intervening plaintiffs, and the class they represent are opposed.

The same is true of the periodicals published by individual labor union defendants paid for by general dues funds and circulated to their members.

51.

The legislative members of one major political party are mentioned favorably in the columns of the "Labor" far more often than are the legislative members of the other major political party, and the legislative members of one major political party and its legislative administrative policy and program are generally mentioned while the other major political party's legislative administrative policy and program are generally condemned in that publication.

52.

Without cost to a particular candidate, the [fol. 333] "Labor" publishes and distributes with numerous copies of special editions designed to praise the virtues of that particular candidate, and a majority of such special editions have been prepared and used for the benefit of the members of one major political party:

During the 1956 general election campaign "Labor" published and distributed 16 such special editions for that number of candidates. The aggregate number of copies of such special editions published and distributed by "Labor" during those campaigns was 727,000. A little less than one-half went to "Labor's" subscribers in the States in which such candidates were running (in lieu of the regular edition of that day) and over one-half were distributed to members of labor union defendants who did not subscribe to "Labor" as well as to members of the general public. "Labor" has prepared and so distributed special editions in election years at least since 1948.

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53.

The political activities mentioned in this Stipulation of Facts do not involve and are unnecessary to the
tiation, maintenance and administration of agreement
concerning rates of pay, rules and working conditions,
wages, hours, terms and other conditions of employment
or the handling of disputes relating to the above.

54.

In numerous instances substantial amounts of ge-
dues money are spent in State and local election
various local lodges of some of the defendant labor union
[fol. 334] and said sums of money are taken from
general dues funds of the local lodge treasuries.
money is used for direct contributions to candidates
public office in State and local elections and in paid
vertisements soliciting support for such candidates
for sundry other purposes directly connected with
political campaigns of such candidates, to aid of
plaintiffs, intervening plaintiffs and the class they re-
sent are opposed.

55.

The union shop agreement has no termination date

56.

The labor union defendant's and, in many instances,
subsidiary lodges and organizations subject to the provisions
of their governing constitutions and by-laws, have power
to make assessments and to increase the amount and level
the dues and fees required for membership in said organiza-
tions, and plaintiffs and intervening plaintiffs and the
they represent are and will be required to pay any suc-
creased amounts in order to retain their employment under
the terms of the union shop agreement.

57.

Copies of the newspaper "Labor", which operated as set out in paragraphs 46-52 heretofore furnished free by "Labor" to all Congressmen and to numerous clergymen, State and local officers and members of the general public.

58.

The machinists Non-Partisan Political League, a political organ of the International Association of Machinists (one of the labor union defendants in this case [fol. 335] after referred to as the "IAM") organized for the specific purpose of engaging in political activities dealing with the election of persons to public office. The organization maintains two funds, one the so-called "educational" fund and the other called "general" fund. The Machinists Non-Partisan Political League received, receives and will receive grants into its "educational" fund from the assets of the defendant IAM, and from district and local contributions thereof. The monies in the "educational" fund (except in the State of Texas, Wisconsin, Massachusetts, Hampshire and Iowa) to make contributions to wisely support candidates for public office at the local level; for publicity to support candidates at the national as well as the State and local level; for administrative expenses to operate the Machinists Non-Partisan Political League generally (including the salaries of paid employees of that organization, office expenses, etc.); and for miscellaneous activities to support candidates (whom plaintiffs, intervening parties and the class they represent oppose) such as the printing and distribution of voting records, and the printing and distribution of various types of political literature and pamphlets toward soliciting or influencing support for persons for political office on the national, State and local level.

The administration, operation and maintenance of the "general" fund activities of the Machinists Non-Partisan Political League, as described in this Stipulation, has been, is and will be financed and supported

expenditures from the "educational" fund of the Machinists Non-Partisan Political League derived from the [fol. 336] dues funds of the defendant IAM.

59.

The activities of the Machinists Non-Partisan League are under the direction and control of the following chairmen: A. J. Hayes, President of the IAM; Ericson, Secretary-Treasurer of the IAM; and Elmer Walker, a Vice President of the IAM. In addition, the Machinists Non-Partisan Political League has the following: (1) a Secretary-Treasurer, Jerry Flinn, who is a Grand Lodge Representative of the IAM; (2) a Director, Hühndorf, who is Director of Research of the IAM; (3) a Grand Lodge Representative of the IAM; (4) a Board of Trustees consisting of Charles West, who is a Grand Lodge Representative of the IAM, M. R. Sterms, who is a General Secretary-Treasurer of the IAM, William Iron, who is a Grand Lodge Representative of the IAM, Blair Hale, who is Grand Lodge Auditor of the IAM; (5) a nine-man Board of Directors who are the same as those described above. The above-listed persons constitute the officers of the Machinists Non-Partisan Political League. Each of the above-named individuals is a national or staff member of the IAM, and receives compensation for his services as such and receives no remuneration for his services to Machinists Non-Partisan Political League.

60.

The Machinists Non-Partisan Political League employs Jack O'Brien, an expert political consultant, as its "political consultant" and pays him a retainer fee of \$12,000 per year plus expenses. The retainer and expenses paid Mr. O'Brien, and the salaries paid to his secretaries are paid from the "educational" fund of the Machinists Non-Partisan Political League. From the inception of the Machinists Non-Partisan Political League the IAM made direct grants of \$10,000 per year from 1953 through 1957, and in 1958 a direct grant of \$12,500 to the "educational" fund of the Machinists Non-Partisan Political League from its dues funds.

61.

The Machinists Non-Partisan Political League is an unincorporated organization (called "State Machinists Non-Partisan Political Leagues") in each of the following States:

Alabama	Indiana
Arizona	Iowa
California	Kentucky
Colorado	Massachusetts
Florida	Minnesota
Georgia	Montana
Illinois	New Jersey
	New York

The national Machinists Non-Partisan Political League assisted in the organization and establishment of the State Machinists Non-Partisan Political Leagues of the above States and continues to aid them in other than by direct financial support. The constitution of the State affiliates of the Machinists Non-Partisan Political League is modeled after the bylaws of the national Machinists Non-Partisan Political League and representatives of the IAM who are elected as directors of the Machinists Non-Partisan Political League coordinate the activities of the various State Leagues. [fol. 338] the national Machinists Non-Partisan Political League through the Coordinator of the State Machinists Non-Partisan Political League.

62.

The "educational" fund of each State Machinists Non-Partisan Political League is maintained entirely from periodic dues and fees through a monthly or lump sum contribution voted by local affiliates on a majority vote basis to be paid from the lodge treasury to the State Machinists Non-Partisan Political League. Plaintiffs, intervening plaintiffs, contend that they represent and oppose such use of the dues and fees which have been, are and will be received by the

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 following twenty-three

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 Oklahoma
 Oregon
 Pennsylvania
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 Texas
 Utah
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and have not, and will not, acquiesce in, or vote for
 use thereof.

63.

Contributions into the so-called "educational" fund
 the national Machinists Non-Partisan Political League
 been made as follows:

Source of Contribution	July-Dec. ¹ 1953	1954	1955	1956
International Headquarters, IAM	\$5,000	\$10,000	\$10,000	\$10,000
District and Local Lodges, IAM	\$ 102	\$33,976	\$27,946	\$44,000
<i>Source of Contribution (Continued)</i>				
International Headquarters, IAM			\$6,250 ¹	
District and Local Lodges, IAM			\$33,161	

Each of the above contributions was made from general

Yearly totals divided by two.

[fol. 339]

64.

Collections for the "general" fund of the Machinists
 Partisan Political League, from which direct contribu-
 to the campaigns of Presidential, Vice Presidential
 gressional, and U. S. Senatorial candidates were a-
 made, were and are made by officers of the Machinists
 Partisan Political League who frequently are dist-
 local lodge officers of the International Association
 chinists.

65.

One-half of the monies for the "general" fund
 Machinists Non-Partisan Political League so collected
 are and will be transmitted to the respective State
 of the national Machinists Non-Partisan Political I-
 where one exists, which retains one-half of the
 transmitted and forwards the remaining one-half
 national Machinists Non-Partisan Political League
 those States in which a State Machinists Non-P-

Political League organization does not exist the entire amount of money collected is transmitted directly to the national Machinists Non-Partisan Political League.

Receipts into the "general" fund of the national Machinists Non-Partisan Political League from all sources during the past five years have been as follows:

1954	\$50,310.40
1955	\$38,743.41
1956	80,843.70
1957	35,308.82
1958 (to May 31)	16,659.82

A true and correct copy of the bylaws of the Machinists Non-Partisan Political League is attached hereto as Ex- [fol. 340] hibit 3.

66.

In 1954, the Machinists Non-Partisan Political League contributed substantial financial support to the National Committee of one major national political party, and not to the other.

67.

In 1956, the Machinists Non-Partisan Political League contributed substantial financial support to the National Committee of one major political party, and not to the other.

68.

In 1954, the Machinists Non-Partisan Political League contributed substantial financial support to 17 U. S. Senatorial candidates of one major political party and to 0 U. S. Senatorial candidates of the other major political party.

69.

In 1956, the Machinists Non-Partisan Political League contributed substantial financial support to 15 U. S. Senatorial candidates of one major political party and to 0 U. S. Senatorial candidates of the other major political party.

70.

In 1954, the Machinists Non-Partisan Political League contributed substantial financial support to 41 Congressional candidates of one major political party and to 0 Congressional candidates of the other major political party.

[fol. 341]

71.

In 1956, the Machinists Non-Partisan Political League contributed substantial financial support to 78 Congressional candidates of one major political party and to 0 Congressional candidates of the other major political party.

72.

In 1954, the Machinists Non-Partisan Political League contributed substantial financial support to 2 gubernatorial candidates of one major political party and to 0 gubernatorial candidates of the other major political party.

73.

In 1956, the Machinists Non-Partisan Political League contributed substantial financial support to 3 gubernatorial candidates of one major political party and to 0 gubernatorial candidates of the other major political party.

74.

The major political party receiving the preponderance of financial aid and support as well as the preponderance of favorable publicity and treatment was the same in every situation mentioned in this Stipulation of Facts and in the depositions of officers and employees of the AFL-CIO referred to in the Stipulation attached hereto.

75.

In each instance where support of candidates, ideologies, or legislation is referred to in this Stipulation of Facts, such reference is intended to cover not only the affirmative support of particular candidates, ideologies or legislative issues, but also opposition to other candidates, ideologies or legislative issues.

[fol. 342]

76.

The determination of the legislative, political, and ideological programs and activities of the labor union defendants, Railway Labor Executives Association, Railway Labor's Political League, the Machinists Non-Partisan Political League, the AFL-CIO or the latter's Committee on Political Education, as set out in this Stipulation of Facts and the depositions referred to in the Stipulation attached hereto, does not involve participation by the plaintiffs, intervening plaintiffs and the class they represent; the views of plaintiffs, intervening plaintiffs and the class they represent have not been sought; and they have not ratified such activities or programs, nor have they acquiesced therein.

77.

The railroad defendants operate lines of railroads in the District of Columbia and in the following States: Georgia, Florida, North and South Carolina, Virginia, Tennessee, Kentucky, Ohio, Indiana, Illinois, Missouri, Alabama, Mississippi and Louisiana. Each of the railroad defendants is a carrier by railroad subject to the Interstate Commerce Act [24 Stat. 379; 49 U.S.C. 1 *et seq.*] and is a "carrier" as defined in the Railway Labor Act [44 Stat. 577; 45 U.S.C. 151 *et seq.*].

78.

The labor union defendants are the only collective bargaining representatives of the employees of the railroad defendants for the crafts or trades covered by the union shop agreement.

[fol. 343]

79.

The documents listed below are official documents of the labor union defendants or other organization as indicated below, and such documents were published by the organization indicated in the regular course of business, the cost of publication and distribution was paid for out of the general dues fund of the organization listed, and copies thereof have been and are kept and maintained by said organizations in the regular course of their business.

(a) The following periodicals of which the labor union defendants will furnish a copy of each issue from January 1, 1956 to July 1, 1958 to plaintiffs and intervening plaintiffs;

<i>Title of Document</i>	<i>Published by:</i>
The Machinist	International Association of Machinists
Boilermakers and Blacksmiths Journal	International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers
Sheet Metal Workers' Journal	Sheet Metal Workers' International Association
Electrical Workers' Journal	International Brotherhood of Electrical Workers
The Carmen's Journal	Brotherhood Railway Carmen of America
Firemen and Oilers Journal	International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers
The Railway Clerk	Brotherhood of Railway & Steamship Clerks, Freight Handlers, Express and Station Employees
[fol. 344]	
The Maintenance of Way Journal	Brotherhood of Maintenance of Way Employees
The Telegrapher	The Order of Railroad Telegraphers
The Signalmen's Journal	Brotherhood of Railroad Signalmen of America
The Washington Log Book	International Organization of Masters, Mates and Pilots
The American Marine Engineer	National Marine Engineers' Beneficial Association
The Train Dispatcher	American Train Dispatchers Association
The Railroad Yardmaster	Railroad Yardmasters of America

(b) The following Convention Proceedings (including Officers' Reports if such reports are separate therefrom) of which the labor union defendants will furnish a copy each for the years shown to the plaintiffs and intervenor plaintiffs.

<i>Name of Organization</i>	<i>Years in Which Convention Held</i>
International Association of Machinists	1956
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers	1957-1953
Sheet Metal Workers' International Association	1958-1954
International Brotherhood of Electrical Workers	1954
Brotherhood of Railway Carmen of America	1954
[fol. 345] International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers	1956
Brotherhood of Railway & Steamship clerks, Freight Handlers, Express and Station Employees	1955
Brotherhood of Maintenance of Way Employees	1958-1955
The Order of Railroad Telegraphers	1956
Brotherhood of Railroad Signalmen of America	1958-1956-1954
International Organization of Masters, Mates and Pilots	1958-1956-1954

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<i>Name of Organization</i>	<i>Years in Which Convention Held</i>
National Marine Engineers' Beneficial Association	1957-1955-1953
American Train Dispatchers As- sociation	1956-1953
Railroad Yardmasters of Amer- ica	1958-1954

(c) The following miscellaneous documents:

Report of Cooperative Labor Legislative Committee
of Georgia—1953

Joint Report of Railroad Brotherhoods—1955

Joint Legislative Report of Railroad Brotherhoods
1955, 1956, 1957

Railroad Brotherhoods Cooperative Labor Legisla-
tive Committee of Georgia—Bulletins 1, 2, 3—1955;
Bulletins 2, 3—1956; Bulletins 1, 2, 4—1957

(d) The following documents published by the Brother-
hood of Railway & Steamship Clerks, Freight Handlers,
[fol. 346]

Express and Station Employees of which the labor union
defendants will furnish to plaintiffs and intervening plain-
tiffs a copy of each issue from 1951 to date:

<i>Title of Document</i>	<i>Published by:</i>
"Legislative Facts"	Brotherhood of Railway & Steam- ship Clerks, Freight Handlers, Ex- press and Station Employees

(e) The President's Bulletin, of which the labor union
defendants will furnish to plaintiffs and intervening plain-
tiffs a copy of each issue during the period from June 15,
1953 to date:

<i>Title of Document</i>	<i>Published by:</i>
The President's Bulletin	Brotherhood of Railway & Steam- ship Clerks, Freight Handlers, Ex- press and Station Employees

(f) Copies of the constitution and by-laws of the labor union defendants and the by-laws of Labor Executives Association and Railway Labor Union.

(g) The minutes of the convention of the State Labor Council for 1956.

(h) The 1956-1957 issue of the Louisiana Railroad titled "Era of Progress" published by the Louisiana Labor Council AFL-CIO.

(i) The following additional issues of "The Clerk", bearing the following dates:

October 1, 1950
July 15, 1951
March 15, 1952
October 15, 1952

[fol. 347]

March 1, 1953
March 15, 1953
June 1, 1953
June 15, 1953
July 1, 1953
March 1, 1955

(j) Copies of each issue of the newspaper "Louisiana" for the years 1956 and 1957 which the labor union defendants will furnish to plaintiffs and intervening plaintiffs.

(k) Copies of each issue of the newspaper "The CIO News" for the entire time of its publication which the labor union defendants will furnish to plaintiffs and intervening plaintiffs.

(l) Copies of each issue of the magazine "The Unionist" for the period from June 15, 1953 to date which the labor union defendants will furnish to plaintiffs and intervening plaintiffs.

Plaintiff Nancy M. Looper is an employee of defendant Southern Railway Company, having been continuously employed by that company since August 17, 1947.

2
s of each of
of Railway
Labor's Polit
ne Louisiana
81.
Plaintiff Mrs. Elizabeth Ferguson is an employee of the
defendant Southern Railway Company, having been co
tinuously employed by that company since June 14, 194
[fol. 348] Plaintiff Ferguson has been employed in pos
tions covered by the union shop agreement at all times sin
the effective date of that agreement. The enforcement
the union shop agreement has been enjoined as to plainti
Ferguson under the order of the trial court upon the filin
by her of a supersedeas bond.

81.

Plaintiff Mrs. Elizabeth Ferguson is an employee of the
defendant Southern Railway Company, having been co
tinuously employed by that company since June 14, 194
[fol. 348] Plaintiff Ferguson has been employed in pos
tions covered by the union shop agreement at all times sin
the effective date of that agreement. The enforcement
the union shop agreement has been enjoined as to plainti
Ferguson under the order of the trial court upon the filin
by her of a supersedeas bond.

82.

Plaintiff J. H. Davis is an employee of the defendan
Southern Railway Company, having been continuously ex
ployed by that company since November 1, 1919. Plainti
Davis has been employed in positions covered by the unio
shop agreement at all times since the effective date of th
agreement. Under the terms of the union shop agreemen
plaintiff Davis was required as a condition of continued e
mployment against his wishes and over his protest, in Mar
1957, to join the defendant Brotherhood of Railway and
Steamship Clerks, Freight Handlers, Express and St
tion Employees, and to pay a reinstatement fee and ba
dues in the amount of \$96.00, and has been required as
condition of continued employment to pay dues of \$2.
per month since that time through the month of Jun
1958, and monthly dues of \$3.00 since June 1958. The a
gregate total of the above sums which plaintiff Dav
has been required as a condition of continued employme
to pay to date under the union shop agreement is \$133.5

83.

Plaintiff Hazel E. Cobb is an employee of the defendan
Southern Railway Company, having been continuously ex

played by that company since September 10, 1927. Cobb has been employed in positions covered by the union shop agreement at all times since the effective date of that agreement. Under the terms of the union shop agreement [fol. 349] ment, plaintiff Cobb was required, as a condition of continued employment, against her wishes and over her protest, in April 1957 to join the defendant Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees and pay an initiation fee and back dues. Since that date she has been required as a condition of continued employment to pay said defendant dues of \$2.25 per month through the month of June 1958, and dues of \$3.00 per month from July 1958 to August 1958, the total amount which said plaintiff has been required as a condition of continued employment to pay under said agreement to said defendant through August 1958 aggregating \$158.25.

84.

Plaintiff S. B. Street is an employee of the New Orleans and Northeastern Railroad Company. Plaintiff has been continuously employed by said company since November 3, 1917. Plaintiff Street has been employed in positions covered by the union shop agreement since the effective date of that agreement. Under the terms of the union shop agreement, plaintiff Street was required, as a condition of continued employment, against his wishes and over his protest, in April 1957 to join the defendant Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and pay to that organization a reinstatement fee and back dues. Since that date to pay to said defendant dues of \$2.25 per month through the month of June 1958, and dues of \$3.00 per month since June 1958. The total amount which plaintiff Street has been required as a condition of continued employment to pay under the terms of said agreement aggregates \$158.25 of August 1, 1958.

1928. Plaintiff
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in the amount
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ndition of con-
said defendant
ates \$151.50 as

Plaintiff Mrs. Edna G. Fritschel is an employee of defendant Southern Railway Company, having been continuously employed by said company since March 20, 1928. The enforcement of the union shop agreement has enjoined as to plaintiff Fritschel by order of the trial court upon the posting by her of a supersedeas bond.

[fol. 351]

EXHIBIT NO. 1 TO STIPULATION OF FACTS

AGREEMENT

This Agreement made this 27th day of February, 1928, by and between Southern Railway Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, Harriman and Northeastern Railroad Company, The Alabama Great Southern Railroad Company (including West stock and Blocton Railway Company), New Orleans Northeastern Railroad Company, The New Orleans Terminal Company, Georgia Southern and Florida Railway Company and St. Johns River Terminal Company, respectively (hereinafter referred to as "Carrier"), and employees of each such company as represented by the Railway Labor Organizations signatory hereto, through the Employers' National Conference Committee, Seventeen Co-operating Railway Labor Organizations, witnesseth:

It Is AGREED:

Section 1.

In accordance with and subject to the terms and conditions hereinafter set forth, all employees of the Carrier now or hereafter subject to the rules and working conditions agreements between the parties hereto, except hereinafter provided, shall, as a condition of their continued employment subject to such agreements, be members of the organization party to this agreement representing their craft or class within sixty (60) calendar days of the date they first perform compensated service as employees after the effective date of this agreement,

thereafter shall maintain membership in [fol. 352] tion; except that such members required of any individual until he has compensated service on thirty (30) days within twelve (12) consecutive calendar months. This agreement shall alter, enlarge or otherwise coverage of the present or future rules and conditions agreements.

Section 2.

This agreement shall not apply to employees occupying positions which are excepted from seniority and displacement rules of the individual. This provision shall not include employees who are on leave to and report to other employees who are on leave from this agreement. However, such excepted employees shall be members of the organization at their return.

Section 3.

(a) Employees who retain seniority under existing Working Conditions Agreements governing their craft and who are regularly assigned or temporarily on time employment not covered by such agreements for a period of thirty (30) days or more, are (1) on account of force reduction, or (2) on leave, or (3) absent on account of sickness or disability, shall be required to maintain membership as provided in Section 1 of this agreement so long as they are on other employment, or furloughed or absent on leave, but they may do so at their option. When employees return to any service covered by existing and Working Conditions Agreements and are absent for thirty (30) calendar days or more, irrespective of [fol. 353] ber of days actually worked during the absence, they shall, as a condition of their continuing employment, be required to remain members of the organization in their craft or class within thirty-five (35) calendar days of their return to such service.

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membership shall not be
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agreements, or who,
e, are (1) furloughed
on leave of absence,
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and continue therein
pective of the num-
during that period,
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red to become and
representing their
calendar days from

(b) The seniority status and rights of em-
loughed to serve in the Armed Forces or g
of absence to engage in studies under an edu
program sponsored by the federal government
government for the benefit of ex-servicemen
terminated by reason of any of the provisio
agreement, but such employees shall, upon res
employment, be considered as new employees f
poses of applying this agreement.

(c) Employees who retain seniority under th
working conditions agreements governing the
craft and who, for reasons other than those
subsections (a) and (b) of this Section 3, are
vice covered by such agreements, or leave s
will not be required to maintain membership
in Section 1 of this agreement so long as th
in service covered by such agreements, but they
at their option. Should such employees return
vice covered by the said rules and working
agreements they shall, as a condition of their
employment, be required, from the date of ret
service to become and remain members in the c
representing their class or craft.

(d) Employees who retain seniority under th
[fol. 354] working conditions agreements of
or craft, who are members of an organiza
tory hereto representing that class or craft
accordance with the rules and working condi
ment of that class or craft temporarily perfo
another class of service shall not be required
bers of another organization party hereto w
ment covers the other class of service until t
employees hold regularly assigned positions
scope of the agreement covering such other c
vice.

Section 4.

Nothing in this agreement shall require an
become or to remain a member of the organiza
membership is not available to such employ

same terms and conditions as are general to any other member, or if the membership is denied or terminated for any reason other than failure of the employee to tender the periodic fees, and assessments (not including fines) uniformly required as a condition of retaining membership. For purposes of dues, fees, and assessments, shall be deemed "uniformly required" if they are required of the same status at the same time in the same unit.

Section 5.

(a) Each employee covered by the present agreement shall be considered by the carrier to be in compliance with the requirements of the agreement unless the carrier is advised to the contrary in writing by the organization. The organization will notify the carrier by Registered Mail Return Receipt Requested, or by personal delivery evidenced by receipt, of any alleged failure of compliance. If [fol. 355] it is alleged that an employee has failed to comply with the terms of this agreement and who the organization claims is not entitled to continue in employment under the Rules and Working Conditions Agreement, a form of notice to be used shall be agreed upon by the carrier and the organizations involved and shall make provision for specifying the reasons for the termination of non-compliance. Upon receipt of such notice by the carrier will, within ten (10) calendar days, so notify the employee concerned in writing by Registered Mail, Return Receipt Requested, or by personal delivery evidenced by receipt. Copy of such notice shall be given to the organization. An employee who disputes the fact that he has failed to comply with the terms of this agreement, shall within ten (10) calendar days from the date of receipt of such notice request the carrier in writing by Registered Mail, Return Receipt Requested, or by personal delivery evidenced by receipt, to accord him a hearing. Upon receipt of such request the carrier shall set a date for hearing to be held within ten (10) calendar days of the receipt of such request.

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s Agreement. The
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of such notice, the
days of such receipt,
riting by Registered
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otice to the employe
employe so notified
led to comply with
hin a period of ten
ceipt of such notice,
stered Mail, Return
livery evidenced by
pon receipt of such
hearing which shall
f the date of receipt

of request therefor. Notice of the date set f
shall be promptly given the employe in writing
to the organization, by Registered Mail, Retu
Requested, or by personal delivery evidenced
A representative of the organization shall a
participate in the hearing. The receipt by the
a request for a hearing shall operate to stay
the termination of employment until the heari
and the decision of the carrier is rendered.

In the event the employe concerned does n
a hearing as provided herein, the carrier shall
[fol. 356] terminate his seniority and employm
the Rules and Working Conditions Agreement
than thirty (30) calendar days from receipt of
described notice for the organization, unless
and the organization agree otherwise in writing

(b) The carrier shall determine on the ba
evidence produced at the hearing whether or n
ploye has come and with the terms of this agre
shall render a decision within twenty (20) cal
from the date that the hearing is closed, and th
and organization shall be promptly advised
writing by Registered Mail, Return Receipt Re

If the decision is that the employe has no
with the terms of this agreement, his seniorit
ployment under the Rules and Working Condi
ment shall be terminated within twenty (20) cal
of the date of said decision except as hereinafte
or unless the carrier and the organization ag
wise in writing.

If the decision is not satisfactory to the e
to the organization it may be appealed in v
Registered Mail, Return Receipt Requested, dir
highest officer of the carrier designated to han
under this agreement. Such appeals must be r
such officer within ten (10) calendar days of t
the decision appealed from and shall operate
tion on the termination of seniority and employ
the decision on appeal is rendered. The ca
promptly notify the other party in writing o

appeal, by Registered Mail, Return Receipt Requested. The decision on such appeal shall be rendered within twenty (20) calendar days of the date the notices of appeal [fol. 357] is received, and the employee and the organization shall be promptly advised thereof in writing by Registered Mail, Return Receipt Requested.

If the decision on such appeal is that the employee has not complied with the terms of this agreement, his seniority and employment under the Rules and Working Conditions Agreement shall be terminated within twenty (20) calendar days of the date of said decision unless selection of a neutral is requested as provided below, or unless the carrier and the organization agree otherwise in writing. The decision on appeal shall be final and binding unless within ten (10) calendar days from the date of the decision the organization or the employee involved requests the selection of a neutral person to decide the dispute as provided in Section 5 (c) below. Any request for selection of a neutral person as provided in Section 5 (c) below shall operate to stay action on the termination of seniority and employment until not more than ten (10) calendar days from the date decision is rendered by the neutral person.

(c) If within ten (10) calendar days after the date of a decision on appeal by the highest officer of the carrier designated to handle appeals under this agreement the organization or the employee involved requests such highest officer in writing by Registered Mail, Return Receipt Requested, that a neutral be appointed to decide the dispute, a neutral person to act as sole arbitrator to decide the dispute shall be selected by the highest officer of the carrier designated to handle appeals under this agreement or his designated representative, the Chief Executive of the organization or his designated representative, and the employee involved or his representative. If they are unable to agree upon the selection of a neutral person any one of them may request the Chairman of the National Media- [fol. 358] tion Board in writing to appoint such neutral. The carrier, the organization and the employee involved shall have the right to appear and present evidence at a hearing before such neutral arbitrator. Any decision by such neutral arbitrator shall be made within thirty (30)

calendar days from the date of receipt of the request for his appointment and shall be final and binding upon the parties. The carrier, the employe, and the organization shall be promptly advised thereof in writing by Registered Mail, Return Receipt Requested. If the position of the employe is sustained, the fees, salary and expenses of the neutral arbitrator shall be borne in equal shares by the carrier and the organization; if the employe's position is not sustained, such fees, salary and expenses shall be borne in equal shares by the carrier, the organization and the employe.

(d) The time periods specified in this Section 5 may be extended in individual cases by written agreement between the carrier and the organization.

(e) Provisions of investigation and discipline rules contained in the Rules and Working Conditions Agreement between the carrier and the organization will not apply to cases arising under this agreement.

(f) The General Chairman of the organization shall notify the carrier in writing of the title (s) and address (es) of its representatives who are authorized to serve and receive the notices described in this agreement. The carrier shall notify the General Chairman of the organization in writing of the title(s) and address(es) of its representatives who are authorized to receive and serve the notices described in this agreement.

(g) In computing the time periods specified in this agreement [fol. 359], the date on which a notice is received or decision rendered shall not be counted.

Section 6.

Other provisions of this agreement to the contrary notwithstanding, the carrier shall not be required to terminate the employment of an employe until such time as a qualified replacement is available. The carrier may not, however, retain such employe in service under the provisions of this Section 6 for a period in excess of sixty (60) calendar days from the date of the last decision rendered under the provi-

sions of Section 5, or ninety (90) calendar days from date of receipt of notice from the organization in cases where the employe does not request a hearing. The employe whose employment is extended under the provisions of this Section 6 shall not, during such extension, retain or acquire any seniority rights. The position will be advertised as vacant under the bulletining rules of the respective agreements, but the employe may remain on the position he held at the time of the last decision, or at the date of receipt of notice where no hearing is requested pending the assignment of the successful applicant, unless displaced or unless the position is abolished. The above periods may be extended by agreement between the carrier and the organization involved.

Section 7.

An employe whose seniority and employment under the Rules and Working Conditions Agreement is terminated pursuant to the provisions of this agreement or whose employment is extended under Section 6 shall have no time or money claims by reason thereof.

If the final determination under Section 5 of this agreement is that an employe's seniority and employment in a [fol. 360] craft or class shall be terminated, no liability against the carrier in favor of the organization or other employes based upon an alleged violation, misapplication or non-compliance with any part of this agreement shall arise or accrue during the period up to the expiration of the sixty (60) or ninety (90) day periods specified in Section 6, or while such determination may be stayed by a court, or while a discharged employe may be restored to service pursuant to judicial determination. During such periods, no provision of any other agreement between the parties hereto shall be used as the basis for a grievance or time or money claim by or on behalf of any employe against the carrier predicated upon any action taken by the carrier in applying or complying with this agreement or upon an alleged violation, misapplication or non-compliance with any provision of this agreement. If the final determination under Section 5 of this agreement is that an employe's employment and seniority shall not be terminated, his continu-

ance in service shall give rise to no liability against the carrier in favor of the organization or other employees based upon an alleged violation, misapplication or non-compliance with any part of this agreement.

Section 8.

In the event that seniority and employment under the Rules and Working Conditions Agreement is terminated by the carrier under the provisions of this agreement, and such termination of seniority and employment is subsequently determined to be improper, unlawful, or unenforceable, the organization shall indemnify and save harmless the carrier against any and all liability arising as the result of such improper, unlawful, or unenforceable termination of seniority and employment; Provided, however, that this Section 8 shall not apply to any case in which [fol. 361] the carrier involved is the plaintiff or the moving party in the action in which the aforesaid determination is made or in which case such carrier acts in collusion with any employee. Provided further, that the aforementioned liability shall not extend to the expense to the carrier in defending suits by employees whose seniority and employment are terminated by the carrier under the provisions of this agreement.

Section 9:

An employee whose employment is terminated as a result of non-compliance with the provisions of this agreement shall be regarded as having terminated his employee relationship for vacation purposes.

Section 10.

(a) The Carrier party to this Agreement shall periodically deduct from the wages of employees subject to this agreement periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership in such Organization, and shall pay the amount so deducted to such officer of the Organization as the Organization shall design-

nate; Provided, however, that the requirements of subsection (a) shall not be effective with respect to individual employe until he shall have furnished the carrier with a written assignment to the Organization of membership dues, initiation fees and assessments, assignment shall be revocable in writing after the expiration of one year or upon the termination of this agreement whichever occurs sooner.

(b) The provisions of subsection (a) of this section shall not become effective unless and until the Carrier and the Organization shall, as a result of further negotiation [fol. 362] suant to the recommendations of Emergency Board No. 98, agree upon the terms and conditions under which such provisions shall be applied; such agreements shall include, but not be restricted to, the means of making deductions, the amounts to be deducted, the form, preparation and filing of authorization certificates, the frequency of deductions, the priority of said deductions with other deductions now or hereafter authorized, the payment of distributions of amounts withheld and any other matters pertinent thereto.

Section 11.

This agreement shall become effective on April 15, 1951, and is in full and final settlement of notices served upon carriers by the organizations, signatory hereto, on or before February 5, 1951. It shall be construed as a separate agreement by and on behalf of each carrier party hereto and those employes represented by each organization on each of said carriers as heretofore stated. This agreement shall remain in effect until modified or changed in accordance with the provisions of the Railway Labor Act, as amended.

Signed at Washington, D. C., this 27th day of February 1953.

FOR EACH CARRIER:

/s/ Fred A. Burroughs
Fred A. Burroughs

Assistant Vice President, Pers

**FOR EMPLOYEES' NATIONAL CONFERENCE
COMMITTEE, SEVENTEEN COOPERATING
RAILWAY LABOR ORGANIZATIONS:**

/s/ G. E. Leighty
[fol. 363] G. E. Leighty
Chairman

Railway Employees'
Department, A. F. of L.
/s/ Michael Fox
Michael Fox
President

International Association
of Machinists
/s/ Earl Melton
Earl Melton
General Vice President

International Brotherhood
of Boilermakers, Iron Ship
Builders and Helpers of
America.

/s/ Charles J. MacGowan
Charles J. MacGowan
International President

International Brotherhood
of Blacksmiths, Drop
Forgers and Helpers
/s/ John Pelkofer
John Pelkofer
General President

Sheet Metal Workers
International Association
/s/ C. D. Bruns
[fol. 364] C. D. Bruns
General Vice President

/s/ L. C. Ritter
L. C. Ritter
General Chairman

/s/ Norman Dugger
Norman Dugger
General Chairman

/s/ T. D. Steadman
T. D. Steadman
General Chairman

/s/ W. G. Roberts
W. G. Roberts
General Chairman

**International Brotherhood
of Electrical Workers.**

/s/ J. J. Duffy

J. J. Duffy

International Vice President

/s/ B. R. Acuff

B. R. Acuff

General Chairman

**Brotherhood Railway
Carmen of America.**

/s/ Irvin Barney

Irvin Barney

General President

/s/ W. W. Dyke

W. W. Dyke

General Chairman

**International Brotherhood
of Firemen, Oilers, Helpers,
Roundhouse and Railway
Shop Laborers.**

/s/ Anthony Matz

Anthony Matz

President

/s/ J. H. Desotell

J. H. Desotell

General Chairman

**Brotherhood of Railway and
Steamship Clerks, Freight
Handlers, Express and
Station Employees.**

/s/ Geo. M. Harrison

Geo. M. Harrison

Grand President

/s/ G. A. Link

G. A. Link

General Chairman

**Brotherhood of Maintenance
of Way Employees.**

/s/ T. C. Carroll

T. C. Carroll

President

/s/ G. A. Sorah

G. A. Sorah

General Chairman

[fol. 365]

/s/ G. W. Ball

G. W. Ball

General Chairman

/s/ J. W. Simpson

J. W. Simpson

General Chairman

**The Order of Railroad
Telegraphers**

/s/ G. E. Leighty
G. E. Leighty
President

**Brotherhood of Railroad
Signalmen of America.**

/s/ Jesse Clark
Jesse Clark
Grand President

**National Organization
Masters, Mates
and Pilots.**

/s/ C. T. Atkins
C. T. Atkins
President

**National Marine Engineers
Beneficial Association.**

[fol. 366] /s/ H. L. Daggett
H. L. Daggett
National President

**American Train Dispatchers
Association**

/s/ O. H. Braese
O. H. Braese
President

**Railroad Yardmasters
of America**

/s/ M. G. Schoch
M. G. Schoch
President

/s/ J. P. Alexander
J. P. Alexander
General Chairman

/s/ H. R. Duensing
H. R. Duensing
General Chairman

/s/ F. G. Gardner

/s/ E. C. Melton
E. C. Melton
General Chairman

/s/ John M. Bishop
John M. Bishop
Secretary-Treasurer

/s/ Wm. O. Holmes
Wm. O. Holmes
Secretary-Treasurer

/s/ R. M. Crawford
R. M. Crawford
General Chairman

/s/ H. E. Ivey
H. E. Ivey
General Chairman

[fol. 367]

IN THE SUPERIOR COURT OF BIBB COUNTY,

Case No. 16,537

[Title omitted]

Bill of Exceptions

Georgia:

Bibb County:

Be It Remembered, that on the 6th day of there was filed in the Superior Court of Bibb County a complaint by J. M. Payne and others against Southern and Florida Railway Company and on June 12, 1953 a petition by Charles L. B. and Nancy M. Looper and others to intervene as parties was offered and allowed; that two groups of amendments to the complaint were offered and allowed on June 23, 1957; and further amendments were offered and allowed on September 23, 1958, the said case as amended by the application on the part of the plaintiffs and the defendant unions from enforcing certain agreements entered into by said railroads with the plaintiffs for a declaratory judgment declaring said agreements and unconstitutional and in violation of the Georgia Constitution, for a declaratory judgment declaring [fol. 368] Labor Act unconstitutional and in violation of the Federal Constitution to the extent that it requires union shop agreements and the requirement of payment by plaintiffs of moneys which are or will be used for purposes allegedly not germane to collective bargaining for monetary damages.

Be It Further Remembered, that on November 1, 1958 the said case, then stated as Nancy M. Looper and others against Georgia Southern and Florida Railway Company and others, came on to be heard before the Honorable L. Long, Judge of Superior Courts, Macon, Georgia, sitting in the Superior Court of Bibb County, sitting.

TY, GEORGIA

jury; and that on December 8, 1958 after introduction of evidence and argument of counsel the said Court entered an order granting plaintiffs the relief requested.

1.

On June 25, 1953, the defendants other than the railway company defendants (said other defendants being herein after referred to as the "union defendants") removed this case to the United States District Court for the Middle District of Georgia, Macon Division. The plaintiffs and the intervenors and the railroad defendants moved in said Court to remand the case to the Superior Court of Bibb County, and the case was remanded.

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(a) The union defendants thereupon on January 10, 1957 filed a motion to dismiss for failure to state a cause of action. At the hearing on said motion to dismiss, on January [fol. 369] ary 29, 1957, plaintiffs offered further amendments to the complaint. Said further amendments were offered at said hearing without prior notice. The Superior Court of Bibb County allowed them over oral objection the same day they were offered. The union defendants then and there excepted, and now except, to the allowance of said January 29, 1957 amendments. They assign the same as error and contrary to law on the grounds that the amendments did not change the cause of action but if they did it was too late, more than three and a half years after the complaint was filed, to amend the complaint to change the nature of the cause of action; that in their motions to remand the plaintiffs and intervenors stated that their complaint was not one of which the federal court had jurisdiction because they were not relying on any claim or right arising under the Constitution or laws of the United States and were not raising any federal question; such representations were the basis of the case being remanded; and said amendments of January 29, 1957 afforded plaintiffs a basis to argue that their rights under the Constitution and laws of the United States were being infringed, contrary to their representations to the United States District Court.

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(b) At a pre-trial conference on September 23, 1957 plaintiffs and intervening plaintiffs offered additional

amendments to the complaint, which the contend included assertions of a federal and federal grounds for relief, and included the prayers for relief asking for type [fol. 370] theretofore requested. The union written objections to said amendments, and of the trial on November 10, 1958, the Court's comment on said objections. The Court overruled the objections of the union defendants.

The union defendants then and there excepted to said ruling and assigned the amendments as error and contrary to law on that: the amendments set up a new and different cause of action than had theretofore been asserted; they sought to change the theory of the case; they sought to change the cause of action; the assertion of federal rights because in their motions to remand the case to the federal court the plaintiffs and intervenors asserted that their complaint was not one of which the court had jurisdiction because they were not relying on a right arising under the Constitution of the United States and were not raising any federal question; and because of said representations the case was stipulated to facts had been entered into the pleadings as they then existed, without objection to all parties to argue the significance of the facts, and the amendments sought to attribute significance to the stipulation which significance the facts did not have when it was made; and for the reasons stated in the following paragraph.

The union defendants say that the amendments were prejudicial to them in that they permitted [fol. 371] change their cause of action from one based on a violation of the State law to one based on a cause of action, because predicated on the United States Constitution, after the case was remanded from the federal court on the basis of the representation that they were not asserting federal rights, thereby permitting plaintiffs to assert their rights in the Superior Court; because they intended to permit plaintiffs to institute a new cause of action.

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changed, without these defendants consent, the effect
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ings.

2.

At the conclusion of the hearing on January 29, 1957, the trial court announced that it would allow the motions of that date, would treat the motion to dismiss directed to the complaint as so amended, and so that said motion would sustain the motion and dismiss the complaint as so amended. On February 4, 1957 the trial court entered an order carrying out said ruling and made it a part of record. This case was then appealed by certain defendants and intervening plaintiffs to the Supreme Court of Georgia which reversed the dismissal of the action. *et al. v. Georgia Southern and Florida Railway Company et al.* (Docket No. 19685), 213 Ga. 279, 99 S.E. 2d 101. The remittitur of the Supreme Court of Georgia was reversed by the Superior Court on July 18, 1957. On July 23, 1958 [fol. 372] it was made the judgment of the Superior Court and on the same day the union defendants filed their answer to the complaint as amended. Plaintiffs objected to the filing of said answer as being out of time and there was no showing of providential cause or excusable neglect. The Court would warrant the Court to permit filing out of time. On February 18, 1958, the Superior Court announced its decision that it sustained said objection, that the answer was out of time, and that the facts and circumstances did not warrant the exercise of the discretion of the Court to permit the filing of the answer. No written order embodying said ruling was entered of record. On September 23, 1958 the objections to the filing of the answer were withdrawn and the oral ruling rescinded.

(a) On May 8, 1958, the union defendants and plaintiffs and intervening plaintiffs, by their attorneys, appeared before the trial judge, in his chambers, for a pre-trial conference. At said conference plaintiffs made an application for the Court to order the defendant unions to produce books, writings, and other documents. The union defendants objected at that time that they had no notice

such motion would be made. The parties in the matter of depositions, and the plaintiff was to include a report on the progress of the depositions; the union defendants [fol. 373] that they had had no notice of and had not expected the subject of the motion. The union defendants asked that consideration of the motion be deferred, but the Superior Court counsel to proceed with argument on the oral argument was then had.

The trial court at the close of the argument granted said motion. The materials so produced included "all books, records, papers, of original entry, check books, ledger correspondence, files, minutes, diaries, manuals, printed materials, brochures" which the union defendants or any of their agents might have or they or their agents might have control over or in any way connected with or related to" any monies which any such organization might have paid to any "or affiliates thereof and the purposes for which monies received" by any such organization were being expended, including any and all monies of the respective organizations to other individuals and the purposes for which such monies were being, or were made . . . ", for the period 1953. The defendant unions were further produced with said materials officers or agents of the union defendants competent and prepared to testify concerning the "identity, nature, contents, and purpose" of all said materials.

[fol. 374] The union defendants made application for rehearing and reconsideration of the order of May 8, 1958, and on May 30, 1958 filed a written motion for the order of May 8, 1958 and to suspend the depositions by plaintiffs until a plea of res judicata by said defendants should be disposed of. The court treated said motion as including a request for reargument, and reconsideration of the order of May 8, 1958, and so treating it, on the same day

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denied suspension of said order and suspension of the
ing of depositions, and scheduled hearing on the p
res judicata for July 1, 1958.

[fol. 375] On August 14, 1958 a comprehensive st
tion was entered into by all parties.

Said case came on for trial on November 10, 1958
after the introduction of evidence, which consisted o
exhibits introduced by plaintiffs (including the afo
stipulation) and 112 exhibits introduced by the unio
fendants, and 84 pages of testimony of witnesses for
tiffs and no testimony of witnesses for defendants,
the close of the proceedings at which evidence wa
ceived, on November 13, 1958, the following occurred

"By Mr. Moye:

Your Honor, I believe that that completes the
duction of evidence in this case from the standpo
the plaintiffs.

[fol. 376] I guess that before I go into what I am
that the defendants, if they have any evidence would
the right to put it in now but as I understand the st
tion there will be no further evidence to be intro
by the Labor Union defendants.

By Mr. Kremer:

I think the stipulation precludes us from offering
further evidence."

"By Mr. Moye:

Your Honor, we rest.

By Mr. Kramer:

Your Honor, we rest, by reason of the stipulation

To the aforesaid rulings and actions of the trial
the union defendants then and there excepted, and
except, and assign the same as error and contrary
and say that such rulings and actions and the consequ
thereof, including the order, judgment, and decree e

after such proceedings, deprived them of due process of law and equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States providing " . . . nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws", and as guaranteed by Article I, section I, paragraphs II and III of the Constitution of the [fol. 377] State of Georgia, in that it deprived them of an adequate opportunity to defend this case. The aforesaid constitutional questions were not made or argued to the trial court, and no objection was made to the introduction of the stipulation of August 14, 1958.

(b) At the close of the evidence, after the introduction of evidence including more than 600 exhibits over a period of four days, the union defendants asked for oral argument on the merits on the basis of the record after the transcript of the proceedings should have been completed and briefs prepared. The Court denied said request and scheduled closing argument on the merits for November 20, 1958, one week after the close of the evidence and before the transcript was completed. Argument was had on November 20 and 21. Shortly after the commencement of argument on the merits by counsel for the union defendants he stated to the Court:

"Now Mr. McKenna went into a great deal of detail on a great many points. As I said earlier, I did not know what arguments they were going to make. I was anxious to learn. Obviously it is impossible at this time for me to take down detailed notes on what he said and to go to the record and show you where some of that may be challenged or some of it explained or some of it given a different interpretation. If the argument of their case depends on all those details, as I assume they think it does or they would not have introduced 500 exhibits; I think it shows the need for having briefs in this case in which we can see just what arguments they make and then [fol. 378] offer such explanatory material that we think explains it or such additional material which

we think calls for a different interpretation. I submit your honor cannot decide this case upon the basis of their arguments until the argument is down in writing and we have a chance to reply to it. Obviously I can't reply to it by making notes and then going through this—I do not know how many cubic feet of record, to find the material and do it all in one day.”

Immediately after the close of argument by counsel for all parties, the Court orally announced its findings of fact as follows:

“Under the stipulation of facts and the evidence I am compelled to the conclusion that periodic dues and assessments required of all members of the fifteen unions, defendant unions, in order to acquire and retain membership have been, are being and will be used in substantial part for the support of political candidates locally, state wide and for federal offices.

“I find that the dues and assessments are being used and will be used in part to support, propagate and foster ideological and political doctrines to which these plaintiffs do not subscribe.

“I find under the stipulation of facts and the evidence in the case that part of this money, a substantial [fol. 379] part, is used, and will be used, for publication of newspapers, magazines, letters, bulletins and periodicals, a substantial part of such publications not being germane to collective bargaining and not incidental thereto, but the publication of matter advocating political ideas and advancing national economic concepts which are not the plaintiffs, or of the class that they represent.

“I find that the publication of bulletins and newsletters, in substantial part is used in an effort to convert the plaintiffs, and members of the class they represent, to political and economic ideologies espoused by the leaders of the unions, who make the policy and to which the plaintiffs should not be subjected and with which they do not agree.

“I find that a part of the dues and assessments is used for the support of political organizations work-

ing in support of candidates for state and federal offices, and also for principles and doctrines which the plaintiffs, and the class they represent, do not care to support.

"I think the evidence establishes the fact that these publications, and particularly the newspaper, LABOR, [fol. 380] and other printed matter are sent out to the general public at the expense of the union dues and assessments advocating candidates and doctrines and principles which these plaintiffs, and the class they represent, do not subscribe to, none of which, in my opinion is germane, or incidental, to collective bargaining.

"The Hanson case simply holds that membership may be required only for the purpose of forcing the employees to pay the expense of collective bargaining and where the evidence shows, as it does in this case, that the money is used for purposes not germane to collective bargaining, but in substantial part for other purposes the contract is not enforceable and to enforce it under these conditions, in view of the facts in this case, would be a violation of the plaintiffs' constitutional rights.

"The stipulation of facts and the evidence in this case show that the union contracts, under the Railway Labor Act, are simply devices by which the property of the plaintiffs, and the class they represent, is extorted or extracted from them and is being perverted for purposes other than collective bargaining, and the Railway Labor Act to this extent is therefore unconstitutional.

"I see no way to determine what part of the dues, initiation fees and assessments is used for collective [fol. 381] bargaining and what part is used for purposes not germane thereto."

After the Court stated those findings, the following occurred:

"By the Court:

I therefore have reached the conclusion that the prayers of the petition for injunctive relief should

be granted and that the Railway Labor Act, to the extent that it does these things, above mentioned should be declared unconstitutional. I would like for counsel to get together and prepare an order. I would like for that to be submitted to railroad counsel and to counsel for the union defendants, and, of course, submitted to me for final approval.

• • • • •
 "And with that, that completes the hearing.
 Anything further now?"

By Mr. Gambrell:

Your Honor please, we have tried to cooperate and be prepared not only for the hearing but we did have faith in our case and we have been working on what we hoped would be an acceptable order in the event the Court ruled with us. We have prepared over a period of a good many days, with faith in our case we have prepared what we thought would be a fair, just and proper order. And we would like to submit to the Court and to opposing counsel copies of what [fol. 382] we have worked on—I don't think anything has transpired this morning, since we worked on it, we worked on it yesterday, we worked on it for the last ten days in fact."

• • • • •
 Counsel for the union defendants protested against being called upon to state his objections to a proposed order he had never seen, and the Court then said:

"By the Court:

Let's do this at this time. Let me see the order. Let counsel also see it and let's take a minute or two recess for you to see it, read it, for me to have a chance of reading it and then we will discuss further this problem that we are talking about now."

A short recess was thereupon taken. Upon the resumption of the hearing counsel for the union defendants objected to being required to present argument on the con-

tents of the proposed order on such short notice being served with a copy, and the Court stated that it would adjourn for the usual luncheon recess of two hours and would immediately thereafter hear objections to the order drafted by plaintiffs.

Upon the resumption of the hearing at the conclusion of the luncheon recess, argument was had on the conclusion of the proposed order. Near the close of his argument concerning the proposed order, counsel for the union defendants stated:

[fol. 383]

"I submit, Your Honor, we should defer consideration of what order should be entered until we have had an opportunity to study it further, Mr. Gambrell stated this morning that he had spent ten days preparing the order and would like some more time to examine it further. I will try to persuade Your Honor in more detail that the order should not be entered."

Immediately after the conclusion of the argument, the Court announced that it would sign the order as presented.

The foregoing objections of the union defendants to the argument on the merits of the case and argument on the proposed order being held at the times they were held, and objections that said defendants were being given inadequate time to prepare for argument, and said objections were not stated in terms of defendants being deprived of constitutional rights because they were being given inadequate time to prepare.

The union defendants then and there excepted, and do except, to the foregoing actions of the trial court in signing the same as error and contrary to law and the denial of these defendants due process of law and the protection of the laws as guaranteed to them by the Fourteenth Amendment to the Constitution of the United States providing "... nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person the equal protection of the laws." [fol. 384] and as guaranteed by Article I, section I, paragraphs II and III of the Constitution of the United States.

Georgia, in that it deprived these defendants of an adequate or fair opportunity to prepare closing argument and prepare their response to plaintiffs' closing argument and to prepare objections to the order of December 8, 1958 as presented by plaintiffs.

(c) The combination of the actions and rulings of the trial court, set forth above in this section of this Bill, under the facts and circumstances of this case, as well as each of said actions and rulings, to which the union defendants then and there excepted, and now except, are assigned by the union defendants as error and contrary to law on the grounds that they deprived said defendants of due process of law and the equal protection of the laws as guaranteed to them by the Fourteenth Amendment to the Constitution of the United States, as hereinabove stated, and as guaranteed by Article I, section I, paragraphs II and III of the Constitution of the State of Georgia, in that they deprived the union defendants of a fair opportunity to prepare closing argument on the merits and to prepare response to plaintiffs' closing argument on the merits and to prepare objections to the order of December 8, 1958, and deprived them of a fair opportunity to defend this case.

3.

The "Findings, Conclusions, Order, Judgment and Decree" (herein sometimes referred to as the "order"), at [fol. 385] rived at as aforesaid, was signed by the trial judge on December 8, 1958.

4.

In paragraph (1) of said order the trial court found that this case is a class action, and granted relief to persons found by it to comprise a class.

Such class was found to consist of "all non-operating employees of the railroad defendants affected by, and opposed to, the hereinafter referred to union shop agreements, who also are opposed to the collection and use of periodic dues, fees and assessments for support of ideological and political doctrines and candidates and legisla-

tive programs . . . " The union defendants then excepted, and now except, to the Court holding that to be such a class action and to granting relief to the group on the ground, among others, that a class cannot be brought or maintained on behalf of a group of components of which are determined by ascertainable mental attitude or a combination of mental attitudes of persons concerning certain matters. The union defendants assign said actions and judgment of the Court as error and contrary to law for the foregoing reason.

5.

In paragraph (1) of said order the trial court held that "the individual defendants and labor organization defendants [fol. 386] represent all the members of the labor organization defendants." The union defendants excepted, and now except, to said order as to the same as error and contrary to law and the fact on the ground that there was no evidence in the record that the individual defendants are or what authority they have to represent or otherwise are in a position to represent the members of the labor organization defendants for the purpose of this case.

6.

In paragraph (2) of said order the trial court held that the union defendants which are labor organization defendants are hereinafter referred to as "labor organization defendants") entered into the stipulations and agreements "without authority from the employees represented by them." The union defendants excepted, and now except, to said order on the grounds, among others, that (a) the labor organization defendants being the collective bargaining representatives under the Railway Labor Act of the employees represented by them such authority was conferred upon them, and (b) paragraph 12 of the stipulations qualifies the statement that the labor organization defendants acted without authority from the employees represented by them while the trial court made such findings.

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 cepted, and now except, to such order and assign the same
 [fol. 387] as error, and contrary to law and to the evidence
 for the foregoing reasons.

7.

In paragraph (4) of said order the trial court found
 that under the said union shop agreements most of the
 plaintiffs and each member of the purported class they
 represent would be required "to pay initiation fees, re-
 instatement fees, and periodic dues in substantial amounts
 to the labor organization defendant representing his or
 her craft or trade as a condition of employment or con-
 tinued employment". The union defendants then and there
 excepted, and now except, to said order on the ground that
 said agreements do not impose any condition of employ-
 ment, nor do they require plaintiffs to pay both initiation
 fees and reinstatement fees as a condition of continued
 employment. They assign the same as error and contrary
 to law as not supported by any evidence, and say the same
 was prejudicial to them because, contrary to the evidence
 it finds the union shop agreements to contain provisions
 that would be violative of the Railway Labor Act.

8.

(a) In paragraph (5) of said order the trial court found
 that the funds collected by the labor organization defen-
 dants from plaintiffs and the class they represent were used
 by said defendants "to support the political campaigns of
 candidates for the offices of President and Vice President
 of the United States, and for the Senate and House of
 [fol. 388] Representatives of the United States, opposed by
 plaintiffs and the class they represent". The union defen-
 dants contend that there is nothing in the record to show
 that any of the labor organization defendants has ever
 used any such funds to support any candidates for federal
 office, and that even if there were any such showing there
 is nothing in the record to show that such candidates were
 opposed by plaintiffs and the class they purport to repre-
 sent or opposed by any of them.

During the proceedings in the trial court on 10, 1958, counsel for the plaintiffs and intervenors stated in open court:

"By Mr. Gambrell:

Since 1947 it has been illegal for a labor union to make or authorize expenditure of funds in connection with political campaign of candidates for Federal Office. As a result of this action, the Labor Union defendants have called voluntary contributions from the public to be used for direct contributions to candidates. Such requests have taken the form of appeals for contributions to the free fund of R.L.P.L. Many such appeals appearing in periodicals published by the Labor Union Defendants through which funds were exacted from the plaintiffs are in the record in this case. But plaintiffs are not here relying upon violation of the Corrupt Practices Act as the basis of their complaint."

[fol. 389] (b) In paragraph (5) of said order the court found that the said funds were so used and also used also to support other candidates for office by direct and indirect financial contribution to each of the labor union defendants separately and to the labor union defendants collectively." The defendants contend that there is nothing in the record to show such use of such funds by any of the labor union defendants; that paragraph 54 of the Stated Facts states that some of the local lodges of the labor organization defendants spend money in local elections, but that there is nothing in the record to identify further such local lodges and nothing to show any of them are local lodges to which any of the intervening plaintiffs or the purported class members sent belong or would pay any funds under the agreements or that any of said local lodges are any labor organization defendant that represents the plaintiffs or intervening plaintiffs; and that the record shows that none of the defendants are local

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(c) The union defendants then and there excepted, now except, to said findings and order of the trial court assign the same as error and contrary to law and unsupported by any evidence for the foregoing reasons, and that the same were prejudicial to them because they constituted one of the grounds for the trial court finding union shop agreements illegal.

[fol. 390]

9.

In paragraph (6) of the order of December 8, 1911, the trial court found that the funds collected by labor organization defendants from plaintiffs and the persons found by it to constitute a class they represent were used "to impose upon plaintiffs and the class they represent, as well as upon the general public, conformity" "certain political and economic doctrines, concepts and ideologies" and conformity to "legislative programs".

The union defendants then and there excepted; and now except, to said finding and order and assign the same as error and contrary to law and unsupported by anything in the record, on the ground that there is nothing in the record to show that any of the union defendants imposed on plaintiffs or any class or the general public conformity to any doctrines, concepts, ideologies, or legislative programs, and the trial court made no factual findings to support such conclusion. They say that the same was prejudicial to them because said finding constituted the principal basis for the trial court finding the union shop agreements illegal.

10.

In paragraph (7) of said order the trial court concluded that the requirement of the payment of money by plaintiffs and the persons found by the trial court to constitute a class represented by plaintiffs, for the purposes and activities theretofore described in said order was "not reasonably necessary to collective bargaining or maintaining the existence and position of said union defendants as effective bargaining agents." The union defendants say that said conclusion was unwarranted by the evidence or record in the case. The union defendants then and there

excepted, and now except, to said con-
and assign the same as error as being c
the foregoing reasons and because it i
anything in the record and say that the
cial to them because it constituted one
grounds for the trial court finding the
ments unlawful.

11.

In the fourth subparagraph of parag
order the trial court held that the union
and the requirement thereunder of the
and fees "are contrary to the Constitutio
public policy of this State, and are contr
or laws of other states in which the de
operate." The union defendants contend
of the Constitution of the State of Geor
or can be specified, which said agreemen
contravene; and they contend that the lav
of the State of Georgia, as expressed in
title 54, chapter 54-9, particularly in s
specifically provides that it shall not be
person subject to the Railway Labor Act,
time to time, to enter into and enforce
as the union shop agreements here invo
[fol. 392] shows that the labor organizati
the railway company defendants are subj
Labor Act. The union defendants conte
no evidence before the trial court to esta
statutes or laws of any other states. •

The union defendants then and there
except, to said order on said grounds a
on the grounds that said agreements an
clearly lawful under the laws of some s
defendant railroads operate even if the
such states were not superseded by the R
and that in some states in which the de
operate the union shop agreements here i
adjudicated by the courts of those states
union defendants assign the said holding
trial court as error and contrary to law
by anything in the record, for the forego

conclusion and order
ng contrary to law for
it is unsupported by
the same was prejudi-
one of the principal
the union shop agree-

Paragraph (8) of said
union shop agreements
the payment of dues
ution, the law and the
contrary to the statutes
e defendant railroads
end that no provision
Georgia was specified,
ments or requirement
law and public policy
d in Code of Georgia,
n section 54-901 (a),
be unlawful for any
Act, as amended from
orce agreements such
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ization defendants and
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re excepted, and now
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and requirement are
e states in which the
the relevant laws of
e Railway Labor Act,
defendant railroads
e involved have been
tes to be lawful. The
ing and order of the
w and not supported
egoing reasons.

12.

In said fourth subparagraph of paragraph (8)
order the trial court held that:

"Said exaction and use of money and said u
agreements and their enforcement are contr
Constitution, the law and public policy of t
and are contrary to the statutes or laws of ot
in which the defendant railroads operate. S
tion and use of money, said union shop agree
Section 2 (eleventh) of the Railway Labor
[fol. 393] their enforcement violate the Unit
Constitution which in the First, Fifth, Ninth
Amendments thereto guarantees to individua
tion from such unwarranted invasion of their
and property rights, (including freedom of as
freedom of thought, freedom of speech, fr
press, freedom to work and their political fre
rights) under the cloak of federal authority."

The union defendants contend that by said lang
in said order, the trial court held that: (a) the rec
of said payment of fees and dues and its enforce
use of the funds so collected as theretofore desc
its enforcement, the union shop agreements and
forcement, and section 2 (eleventh) of the Railw
Act and its enforcement, violate the United State
tution under the cloak of federal authority; (b)
Fifth, Ninth and Tenth Amendments to the Unit
Constitution guarantee to individuals personal and
rights invaded by said requirement, use of fun
shop agreements, section 2 (Eleventh) of the Railw
Act, and their enforcement, including the rights to
of thought, freedom of speech, freedom of press,
rights.

The union defendants then and there excepted,
except, to said order on the grounds, among others
said Amendments impose no restrictions on the
[fol. 394] railroads or labor unions; that there wa
in the record to show interference with any fr
think, speak, publish, vote, or other rights sta

the actions of the labor organization not taken under the cloak of federal authority and in certain other states because, among Georgia and elsewhere there was no statute enacted by the Railway Labor Act in order to enforce union shop agreements; and that said statute was a valid enactment of the Congress of the United States. The union defendants assign said finding of error as being contrary to law and the foregoing reasons.

13.

In paragraph (9) of said order, the court held that the injury to plaintiffs from the commission of the defendants will be irreparable. The court did not make such finding with respect to the injury to it to constitute a class represented by plaintiffs.

The union defendants then and there claimed error except, to said finding and order and assigned error and contrary to law and to the evidence going reason and on the grounds that said irreparable injury to plaintiffs is without support in the record; that the record showed that the union defendants had been in effect for more than five years at the trial, and that the greatest amount of damages [fol. 395] by any plaintiff is \$158.25; and that the injury suffered for such a period, and

14.

In paragraph (10) of said order the court held that "the labor union defendants, by their commission of the acts used for collective bargaining purposes and those used for the complained of purposes . . . have made it impossible to segregate the dues collected . . . which are . . . used for collective bargaining purposes from those which are . . . used for the complained of purposes and activities. . . ." The union defendants contend that said holding was erroneous for other reasons: funds used for collective bargaining purposes and funds used for the complained of purposes.

ion defendants were
authority in Georgia
among other things, in
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order to validate the
l section 2 (Eleventh)
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. The trial court did
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plaintiffs.

re excepted, and now
l assign the same as
evidence for the fore-
at said finding of ir-
ut support in the re-
union shop agreements
years at the time of
t of damage claimed
nd that such damages,
are not irreparable.

e trial court held that
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es and activities and
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egate the amount of
or collective bargain-
... used for the com-
." The union defen-
error because, among
ive bargaining pur-
ned of purposes are,

when so used, no longer funds of the labor or
defendants which they can commingle; there is
the record to support any finding that the labor
tion defendants commingle any such funds or
funds; there is nothing in the record to support a
that anything any of the labor organization defe-
done had made it impossible for plaintiffs to do
and there is nothing in the record to show what
accounts are kept by the labor organization defe-
to show whether it would be impossible or difficul-
tain what amounts of funds are expended for
purposes.

To said holding and order the union defendants
there excepted, and now except, and assign the
error and contrary to the law and the evidence
foregoing reasons, and say that the same was p-
[fol. 396] to them in that it resulted in the t
enjoining the enforcement of the union shop a
in their entirety.

15.

In said order of December 8, 1958, the trial
joined not only the railway company defendant
labor organization defendants but also the indi-
fendants from enforcing the union shop agree-
from discharging petitioners, or any member of
they represent, for refusing to become or remain
of, or pay periodic dues, fees or assessments
the labor union defendants." The union defen-
and there excepted, and now except, and assign
as error as being contrary to law and to the ev-
cause: there is nothing in the record to show th
the union defendants ever had discharged or
charge or threatened to discharge plaintiffs or an-
of the purported class they represent, or to show
of the individual defendants are or any actions
any of them) have taken or threatened to take, c-
sons for any such actions; it enjoins the defend-
enforcing the union shop agreements in their en-
only against plaintiffs and the purported class t
sent but against anyone whether or not a mem-

purported class; it is impossible for the defendants to know who the members of the purported class are whom they are enjoined from discharging because the class is described in paragraph (1) of said order as persons having a combination of mental attitudes, and the order therefore would subject defendants to a risk of violation thereof without [fol. 397] their being in a position to know they were violating the order; it enjoins the enforcement of the union shop agreement against persons other than the plaintiffs although only the plaintiffs, and not the other members of the purported class or other persons, are found by the order to be subject to irreparable injury; it enjoins the enforcement of the union shop agreements against persons resident in other states whose courts have held such persons not entitled to such relief; it enjoins the enforcement of the union shop agreements in states where said agreements are lawful even if section 2 (Eleventh) of the Railway Labor Act is unconstitutional, and it enjoins the enforcement of said agreements in states whose courts have held said agreements valid.

16.

The injunctive portion of said order, and the entire order, are directed to all the union defendants, including all the labor organization defendants.

The union defendants contend that the record shows that three of the plaintiffs, Davis, Cobb and Street, are employed as clerks and are represented in collective bargaining by defendant Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and fails to show the craft or class in which any of the remaining plaintiffs, Looper, Ferguson and Fritschel, is employed or the collective bargaining representative of such craft or class; that Section 11 of the union shop [fol. 398] agreements provides that it shall be construed as a separate agreement between each railroad party thereto and each labor organization representing employees on each of said railroads, and that the only agreement or agreements affecting plaintiffs are those between the railroad or railroads by which said plaintiffs are employed

and the collective bargaining representative of their craft or class on said railroad or railroads.

The union defendants then and there excepted, and now except, to this action being maintained against, or any relief being granted by said order against, any labor organization defendant or other union defendant on the foregoing grounds and on the ground, among others, that plaintiffs had and have no standing to sue, or complain of collective bargaining agreements or other conduct of, any defendant labor organization other than the one which is their collective bargaining representative and to which they would, under the union shop agreement applicable to them, pay periodic dues and fees. The union defendants assign as error as being contrary to law and to the evidence the actions and order of the court in sustaining the suit against, and granting relief against, all other union defendants, for the foregoing reasons.

17.

In said order the trial court made the same findings for all the labor organization defendants and found that all engaged in the same activities. The union defendants contend that the evidence differed substantially with respect to each of the labor organization defendants; that with respect to much of the evidence it is impossible to tell to which of the said defendants it applies; and that with respect to some of the labor organization defendants there was no substantial evidence. The union defendants then and there excepted, and now except, to evidence with respect to one labor organization defendant being considered by the court as evidence with respect to all and the same findings and order being made with respect to all the labor organization defendants, and assign the same as error as being contrary to law and to the evidence for the foregoing reasons.

18.

In the injunctive portion of said order the trial court ordered: "provided, however, that said defendants (all the defendants) may at any time petition the court to dissolve said injunction upon a showing that they no longer are

engaged in the improper and unlawful activities described above." The union defendants then and there excepted and now except, to the injunction having such proviso and only such proviso, on the grounds, among others, that:

(a) The order contains no findings or adjudication that any activities that do not include the enforcement of the union shop agreements are improper or unlawful. Under said proviso the defendants could petition to be permitted to enforce the union shop agreement only upon a showing [fol. 400] that they no longer enforce it.

(b) There was no finding that the individual defendants engage or engaged in any activities "described above".

(c) There was no finding that the railway company defendants engage in any activities "described above" other than the enforcement of the union shop agreements.

(d) If the proviso was intended to hold that any of the activities "described above" with relation to legislation or political or economic or ideological matters are improper and unlawful, said holding and order specifies and can specify no provision of law which any of them violates and such activities are not unlawful.

(e) The order does not permit the enforcement of the union shop agreements with respect to such portion of the dues, fees, and assessments as are spent for purposes the court considers lawful, upon a showing of what such portion is, but enjoins the enforcement of the requirement of making any such payments so long as any of them or any portion of any of them is used for purposes the trial court considers "improper", and the trial court refused to include a provision that would permit the union defendants to show what proportion of the dues, fees, and assessments they collect are spent for purposes the Court might consider germane to collective bargaining, and upon such showing to request dissolution of the injunction with respect to requiring the payment of such proportion.

The union defendants assign the inclusion of said proviso in said order and only said proviso, as error as being contrary [fol. 401] to law for the foregoing reasons, and because the order enforces them from enforcing the union

shop agreements to any extent and under any and all circumstances and regardless of the purposes for which the union defendants might spend their funds, except under conditions which are self-contradictory and with which it would be literally impossible to comply.

19.

In said order the trial court declared section 2 (Eleventh) of the Railway Labor Act to be unconstitutional "to the extent that it . . . is applied to permit, the exaction of funds from plaintiffs and the class they represent for the complained of purposes and activities". The union defendants then and there excepted, and now except, and assign error to said declaration and order on the ground, among others, that it is unintelligible and therefore error and contrary to law, and to the extent that it declares section 2 (Eleventh) of the Railway Labor Act to be unconstitutional it is error and contrary to law because said provision was lawfully enacted by the Congress of the United States pursuant to the provisions, among others, contained in the third clause of section 8 of Article I of the United States Constitution, and became the supreme law of the land by virtue of the second clause of Article VI of said Constitution.

20.

In said order the trial court declared the union shop agreement "to be null, void, and of no effect as between the [fol. 402] parties". The union defendants then and there excepted, and now except, and assign the same as error as being contrary to law because said agreements are expressly permitted by section 2 (Eleventh) of the Railway Labor Act.

21.

(a) In said order the trial court declared "that the . . . enforcement of said union shop agreements is illegal in that it deprives plaintiffs, and the class they represent of the . . . personal rights guaranteed by the Constitution of the United States" to "freedom of association, freedom of thought, freedom of speech, freedom of press, freedom to

work and their political freedom". The union deferred then and there excepted, and now except, to said declaration and order on the ground that the enforcement of union shop agreements by the defendants or any of them does not and would not deprive plaintiffs or any member of the purported class they represent of any of said rights or any rights they may have under the Constitution of the United States; they assign said declaration and order as error and contrary to law for the foregoing reasons.

(b) After the close of evidence by both sides, in the course of oral argument on the merits a week after the close of the evidence, the plaintiffs asked the Court to take judicial notice of certain statutes of certain other States in which the railroad defendants operated.

In said order of December 8, 1958, the trial court declared that said enforcement of the union shop agreements would be illegal in depriving plaintiffs and the purported members of the purported class they represent of the aforesaid rights "guaranteed by . . . the laws and policy of this state and other states". The union defendants then and there excepted, and now except, to said declaration and order on the ground, among others that no provision of law or policy of any state was specified as those that would be contravened. Since the laws and policies of other states were not proven and not before the court, the enforcement of the union shop agreements would not violate the laws or public policy of this or any other state or jurisdiction, these very union shop agreements have been adjudicated by the courts of other states in which the defendant railroads operate to be valid, and the laws and public policy of this state specifically provide that a union shop agreement by persons subject to the Railroad Labor Act shall not be unlawful, all as fully set out in section 11 of this Bill. The union defendants assign said declaration and order as error and contrary to law for the foregoing reasons.

22.

In said order the trial court awarded damages to the plaintiffs who had joined the defendant Brotherhood of Railway and Steamship Clerks, Freight Handlers, E

and Station Employees under the terms of the union shop agreement and had paid said Brotherhood dues and either an initiation fee or reinstatement fee, said damages in such instance being in the amount of such fee and dues for the period since June, 1953, approximately five years.

Upon sustaining the motion to dismiss on February 4, 1957, the trial court announced that it would upon application enter a supersedeas order in favor of such persons as [fol. 404] might become plaintiffs in error to review said order. On March 4, 1957, the trial court entered a supersedeas order in favor of the twelve persons who became plaintiffs in error conditioned on said persons filing a bond in the amount of \$66.00. The union defendants contend that all three persons awarded said damages in the order of December 8, 1958, had the opportunity to become plaintiffs in error and come under the supersedeas order. Two of the three, plaintiffs Cobb and Davis, were intervening plaintiffs but did not become plaintiffs in error and file a supersedeas bond. One of the three, plaintiff Street, was an original plaintiff and became a plaintiff in error but did not file a bond. All three, instead of taking such action, became members of said Brotherhood and paid the fees and dues and continued paying the dues, in the aggregate amounts set forth in said order of December 8, 1958. The union defendants contend that all three, having so elected, have for said period enjoyed the privileges and benefits of membership in said Brotherhood, and cannot properly be awarded damages in the amount of said fees and dues or in any other amount.

The union defendants objected to said damages being so awarded and to said order and then and there excepted, and now except, and assign the same as error as being contrary to law for the foregoing reasons.

23.

In the penultimate paragraph of the order of December 8, 1958, the court stated that the order operated "as an ad-[fol. 405] judication of the basic common rights asserted by plaintiffs in their own behalf and on behalf of other employees of the defendant railroads similarly situated . . .". The union defendants then and there excepted, and now ex-

cept, and assign the same as error as being contrary for the reasons that this case cannot properly be adjudicated the rights of persons other than the named plaintiffs and intervening plaintiffs because the persons as constituting the class cannot properly constitute for the purpose of a class action, as more fully set forth in section 4 of this Bill; the named plaintiffs' standing to sue any union defendant other than the Brotherhood of Railway and Steamship Clerks, as set forth in section 16 of this Bill; and a class cannot properly or lawfully determine the rights of persons other than named plaintiffs and others entitled to the same relief.

24.

(a) The union defendants then and there excepted from the order of December 8, 1958, and now except, and assign error thereto for the reasons that the action should have been dismissed and all relief sought by the plaintiffs because on the basis of the entire record, or any portion of any parts of the record, no cause of action was proved or established and the decision was therefore contrary to law, and contrary to the evidence.

(b) In said order, the trial court made and entered its "Findings, Conclusions, Order, Judgment and Decree", finding in favor of the plaintiffs even [fol. 406] relief sought by them, and against the defendants and assessed damages against them and permanently enjoined them from carrying out the union's demands with the Railway Company defendants, but the trial court's said findings and conclusions; and every part of said "Finding, Conclusions, Order, Judgment and Decree", and to all said parts, these are then and there excepted, and now except, and assign thereon for the reasons that the same as a whole and of its several parts is contrary to law, contrary to the principles of equity, and contrary to the evidence in said case, and the trial court erred as a matter of law and equity in making and entering the same and in granting all or any part of the relief sought by plaintiffs.

Plaintiffs in error specify the following portions of the record in said case as material to a clear understanding of the errors complained of in this Bill of Exceptions:

1. Complaint, filed June 6, 1953.
2. Petition to Intervene, filed June 1st, 1953.
3. Order allowing Intervention, filed June 12, 1953.
4. Amendment of Petition, 14 paragraphs, and Order filed June 27, 1953.
5. Amendment of Petition, 21 paragraphs, and Order filed June 27, 1953.
6. Answer of Railroad Defendants, filed June 29, 1953.
7. Amendment to Petition, and Order, filed January 29, 1957.
8. Supersedeas Order, filed March 4, 1957.
- [fol. 407] 9. Answer of Defendants other than railway company defendants, filed July 22, 1957.
10. Order of May 8, 1958, filed May 8, 1958.
11. Petition for Order Suspending Court's Order of May 9, 1958, filed May 30, 1958.
12. Order of May 30, 1958.
13. Amendments to petition, and Order, filed September 23, 1958.
14. Objections to amendments to petition, filed October 7, 1958, and Order thereon, filed November 10, 1958.
15. Answer to amendments of September 23, 1958, filed October 7, 1958.
16. Pre-trial Order, filed November 10, 1958.
17. Findings, Conclusions, Order, Judgment and Decree filed December 8, 1958.
18. Brief of the Evidence, with Order of Approval, filed January 5, 1959.
19. Petition for Removal.

20. Motion of Petitioners to Remand.
21. Motion of Intervenors to Remand.
22. Motion of railroad defendants to remand.
23. Order of remand.
24. Entries of filing of each and all parts of the above specified to be entered and transmitted in due order.

International Association of Machinists; Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America; International Association of Blacksmiths, Drop Forgers, and Helpers; Workers International Association; International Brotherhood of Electrical Workers; Brotherhood of Locomotive Engineers and Firemen of America; International Brotherhood of Teamsters, Oilers, Helpers, Roundhouse and Railway Shop Employees; Brotherhood of Railway and Steamship Clerks and Freight Handlers, Express and Station Employees; Brotherhood of Maintenance of Way Employees; Order of Railroad Telegraphers; Brotherhood of Railroad Signalmen; National Organization of Masters, Mates and Pilots; Marine Engineers Beneficial Association; American Dispatchers Association; Railroad Yardmasters Association; L. C. Ritter, R. H. Hubbard, Norman D. Westbrook, John Pelkofer, T. B. Steadman, C. D. Bruns, W. G. Roberts, H. H. Dent, J. J. Acuff, T. J. Roberts, Irvin Barnery, W. W. Chapman, Anthony Matz, J. H. Desotell, I. George M. Harrison, G. A. Link, J. D. Averard, G. W. Ball, R. K. Lanfair, F. G. Ga Duensing, E. V. Peed, Jesse Clark, E. C. M Dasher, B. T. Hurst, John M. Bishop, W. L. O. Holmes, O. H. Brasse, R. M. Crawford, T. V. M. G. Schoch, H. E. Ivey, T. J. Dams, and Ch Gowan, name themselves as Plaintiffs in Error. S. B. Street; Hazel E. Cobb; J. H. Davis, M Fritschel; Nancy M. Looper; Mrs. Elizabeth Georgia Southern and Florida Railway Company; Eastern Railway Company; Cincinnati, New Orleans and Gulf Coast Pacific Railway; Alabama Great Southern Railway.

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J. Duffy, B. B.
W. Dyke, W. B.
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road Company; New Orleans and Northeastern Rail-
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New Orleans Terminal Company; St. Johns River Ter
nal Company; and Harriman and Northeastern Rail
Company as Defendants in Error.

The Supreme Court has jurisdiction in this case beca
the action involves the constitutionality of a statute of
United States, which the trial court in its order of Dec
ber 8, 1958 held unconstitutional as violative of the Fi
Fifth, Ninth, and Tenth Amendments to the Constitut
of the United States, and involves injunctive relief, wh
the trial court granted in said Order.

The Bill of Exceptions was originally tendered to
trial court at 1:06 P. M. on January 7, 1959. The t
court specified January 15, 1959 as the day on which
other parties would be afforded an opportunity to be he
on the question of whether or not the Bill of Excepti
as originally tendered was correct and complete. The pl
tiffs requested the Court to advance said hearing to Ja
ary 8 or 9, 1959. The Court denied said request and th
upon request of plaintiffs, said hearing was set for Ja
ary 16, 1959. Hearings were held on January 16 and
1959, and on the latter day the trial court returned the
to Plaintiffs in Error with instructions to make a num
of changes.

And now, within the time provided by law, come
plaintiffs in error, and assigning error on all the ruli
and actions of the trial court complained of as being c
[fol. 410] trary to law, tender this bill of exceptions
vised in accordance with the instructions of the trial co
and pray that the same may be certified to as provided
law, and transmitted to the Supreme Court of Georgia
order that the alleged errors may be considered and c
rected.

Milton Kramer, Schoene & Kramer, Commonwe
Building, 1625 K Street, N. W., Washington
D. C.

David L. Mincey, 321 Cotton Avenue, Ma
Georgia.

C. E. Gregory, Jr., Arnall, Golden & Gregory,
Fulton Federal Bldg., Atlanta, Georgia.

The foregoing Bill of Exceptions was
1:06 P. M. on the 7th day of January, 1959
as revised herein at 2:55 P. M. on this 28th
1959.

O. L. Long, Judge of Superior Court
Civil Circuit.

[fol. 414]

IN THE SUPERIOR COURT OF BIBB COUNTY

[Title omitted]

CERTIFICATE OF JUDGE TO BILL OF EXCEPTIONS
February 3, 1959

I hereby certify that the Bill of Exceptions
by the Plaintiffs in Error on January 16 and 17, 1959 on the question
other parties were afforded an opportunity to be heard on February 3, 1959
Bill as originally tendered was correct and complete; that extensive hearings were held on said day
17, 1959, I returned the Bill of Exceptions to the Plaintiffs in Error with instructions to make changes
Bill of Exceptions was re-tendered by Plaintiff on January 28, 1959; that the other parties were
an opportunity to be heard on February 3, 1959 on the question of whether the re-tendered Bill of
correct and complete; that hearings thereon were held on said date; that the foregoing Bill of Exceptions
and contains and specifies all of the evidence and all of the record, material to a clear understanding of the
errors complained of; and the Clerk of the Court of Bibb County is hereby ordered to make and deliver
[fol. 415] a complete copy of such parts of the record as are in this Bill of Exceptions specified
same as such, and cause the same to be filed in the Supreme Court, that the errors alleged to have been
committed may be considered and corrected.

This 3 day of February, 1959.

O. L. Long, Judge, Superior Court

was tendered to me at
1959, and retendered
28th day of January,

Courts, Macon Judic

S COUNTY, GEORGIA

OF EXCEPTIONS—

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court of Bibb County.

[fol. 419]

IN THE SUPREME COURT OF GEORGIA
Case No. 20428.

INTERNATIONAL ASSOCIATION OF MACHINISTS

v.

STREET et al.

Opinion—May 8, 1959

By the Court:

1. The plaintiffs in error not having excepted bill of exceptions to the order allowing the amendment January 29, 1957, when this case was here before v. Georgia So. & Fla. Ry. Co., 213 Ga. 279, 99 S. E. 2d 100, it is now too late to except to such order.

2. The amendment of September 23, 1958, to the order was not subject to the objections interposed.

3. If the legal rights of the parties are not prejudiced, this court will not interfere with the discretion of the trial court in matters of practice in the hearing and disposition of causes before it unless this discretion has been exercised in an illegal, unjust, or arbitrary manner.

4. The findings of fact and conclusions of law in the final decree are fully supported by the evidence and evidence.

5. The plaintiffs and the class they represent have a common interest in the subject matter of the suit and the ultimate issues to be decided. The objections to the findings by the court that this was properly a class action authorized under Code § 37-1002 are without merit.

6. The finding by the court in its decree that the defendant unions were using the funds derived from the collection of dues, fees, and assessments from their members to propagate and promote political and economic concepts, and ideologies opposed by the plaintiffs and the class they represent, was demanded by the evidence.

7. The finding by the court, that the ex in the form of dues, fees, and assessments on defendant unions, was by virtue of the union between the defendant railroads and the [fol. 420] permitted under section 2 (Eleventh) way Labor Act (45 U. S. C. § 151 et seq.) use of such union funds for the purposes set out in the preceding headnote, was violative of the rights of the defendant under the First and Fifth Amendments to the Constitution of the United States, was authorized by the Act.

Almand, Justice. When this case was on a bill of exceptions assigning error on the plaintiffs' petition, we reversed the order because, by reason of the allegations of the amended petition, that "The initiation of dues and assessments which plaintiffs were to pay under the terms of the union shop agreement heretofore referred to will be used in substantial part for purposes not germane to collective bargaining, but for the promotion of ideological and political doctrines and for the support of causes which plaintiffs are not willing to support and which they cannot be forced to support, this violating plaintiffs' constitutionally guaranteed rights of freedom of association, of liberty and property," and of paragraph 5 of the petition, that "Petitioners allege that section 2 of the Railway Labor Act (45 U.S.C.A. sec. 151) goes to the extent that it authorizes the union to require the payment of dues and assessments heretofore referred to, and said agreement is in violation of the First, Fifth, and Ninth Amendments to the Constitution of the United States of America and is therefore invalid," the petition as against a cause of action was sufficient to state a cause of action for relief. *Loopex v. Georgia So. & Fla. Ry.* (99 S.E. 2d 161). We there said that, in view of the holding of the Supreme Court of the United States in *Dept. v. Hanson*, 351 U. S. 225 (3c), 76 S. Ct. 1033, 17 L. Ed. 1112) upheld the validity of a union agreement executed under sec. 2, Eleventh, of the [fol. 421] Act (45 U.S.C.A. § 152), in v.

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states (Railway Emp.
76 S. Ct. 714, 100
a union shop agree-
of the Railway Labor
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ment made in the opinion that "Judgment is re-
to the validity or enforceability of a union or clo-
agreement if other conditions of union member-
imposed or if the exaction of dues, initiation fe-
sessments is used as a cover for forcing ideolo-
formity or other action in contravention of the
the Fifth Amendment," the question of whether
shop agreement violated the plaintiffs' rights u-
First and Fifth Amendments to the Federal Con-
under the alleged facts in this case, was left
future determination.

When the case was returned to the trial court
defendant unions filed their answer. At a pre-trial
the trial judge entered an order requiring the uni-
dants to produce certain books, documents, and
and the appearance of officers and agents to tes-
respect to them. The motion of the union defen-
suspend this order until their plea of res a-
could be inquired into was denied. On September
the plaintiffs filed an amendment to their petit-
objections of the union defendants to this amendm-
overruled. At a later pre-trial hearing the ple-
adjudicata was withdrawn. A stipulation of fa-
cuted by all the parties on August 14, 1958, was
by the court and filed. This stipulation consists of
lations covering 45 pages. We set out here only the
lations that we deem most pertinent to the issue.

"2. Each of the plaintiffs and each of the in-
plaintiffs was an employee of one of the railroa-
dants herein (collectively constituting the South-
way System) in a craft or trade covered by the un-
agreement at the commencement of this litigation.

"3. Some of the plaintiffs and intervening
are not now, and never have been, members of a
defendant labor union organizations (their statu-
protected by supersedeas bond).

[fol. 422] "8. Each of the plaintiffs, and in-
plaintiffs, and the class they represent receive
both from the railroad defendant employer and

union defendant applicable to his or her craft or trade, that unless he or she became a member of the appropriate labor union defendant within 60 days of the date he or she first performed compensated service for the railroad defendant, or within 60 days of the effective date of the union shop agreement, whichever is the later, such employment would be terminated and such employee dismissed pursuant to the union shop agreement.

"12. The union shop agreement referred to in paragraph 1 above was negotiated by the labor union defendants with the railroad defendants without any authorization from the employees of such railroad defendants embraced within the craft or trade applicable to each labor union defendant. [Ital: ours], other than such authority as might be implied from each labor union defendant's being the collective bargaining representative of employees of such railroad within such craft or trade for the purposes of the Railway Labor Act from the dates and as set forth in paragraph 13. The usual processes of the defendant unions in determining collective bargaining policy were followed. Such processes do not, and in the instance of the negotiation and execution of the union shop agreement did not, involve any notice to the employees of the railroad defendants that the negotiation and execution of such an agreement was contemplated, or any opportunity to express their wishes pro or con with respect to such negotiation and execution of the union shop agreement, or any opportunity to ratify or reject such action.

"14. Each of the plaintiffs and intervening plaintiffs was employed for many years by one of the railroad defendants prior to the execution of the union shop agreement hereinabove referred to, and that also is true of many others of the class represented by the plaintiffs and intervening plaintiffs, and none of such persons had notice prior to entering into an employment relationship with such railroad defendant that union membership would at any time [fol. 423] be required as a condition of employment or continued employment [ital. ours].

"19. The periodic dues, fees and assessments which plaintiffs, intervening plaintiffs and the class they represent, have been, are and will be required to pay under the terms of the union shop agreement hereinabove referred to, have been, are being, and will be used in substantial part for purposes other than the negotiation, maintenance, and administration of agreements concerning rates of pay, rules and working conditions, or wages, hours, terms and other conditions of employment, or the handling of disputes relating to the above, but to support ideological and political doctrines and candidates which plaintiffs, intervening plaintiffs, and the class represented by them, were, are, and will be opposed to and not willing to support voluntarily [ital. ours].

"20. The mechanism by which the periodic dues, fees and assessments required to be paid under the terms of the union shop agreement were, are and will be used in substantial part to support ideological and political doctrines and candidates for public office which plaintiffs, intervening plaintiffs, and the class represented by them, are not willing to support, is as set forth in this Stipulation.

"A substantial portion of the periodic dues, fees and assessments required of plaintiffs, intervening plaintiffs, and the class they represent, or which will be so required, has been, is being and will be retained by, or remitted to, the individual local lodge of the labor union defendant to which each such person paid and will be required to pay his dues, and has been, is being, and will be, used to support legislative activity in the legislatures of the State or States covered by the membership of such local lodge, including miscellaneous general legislation not confined to legislation involving the negotiation, maintenance and administration of agreements concerning rates of pay, rules and working conditions, or wages, hours, terms and other conditions of employment, or the handling of disputes relating to the above and, except in Wisconsin, New Hampshire, [fol. 424] shire, Pennsylvania, Indiana, Texas and Iowa, to extend substantial financial support to candidates for public office in the executive, legislative and judicial

branches of the state and local governments in the locality of the local union [ital. ours].

"21. Some of the legislative and political activities referred to in the preceding paragraph are carried out by some of the individual local lodges of the labor union defendants, and in some situations, such activities were, are, and will be carried out on a cooperative basis, the local lodges of several of the defendant unions cooperating (not only between themselves, but also with local lodges of labor unions not defendants in this litigation, through State, district and local AFL-CIO central bodies and their Committees on Political Education as well as ad hoc committees), and in some instances the financial support for such local legislative and political activities is derived not only from the local lodge organizations but also from direct grants from the federal dues funds of the national or grand lodge organization of a particular labor union defendant.

"In each instance where 'general fund' or 'general dues fund' or like phrase is employed in this Stipulation of Facts (except where used in reference to the Machinists Non-Partisan Political League, where the phrase is used to denote the 'political' fund which is derived from individual contributions), it refers to the fund or account, or that part thereof, derived and maintained from periodic dues, fees and assessments of the members of such organization.

"22. A substantial proportion of the periodic dues, fees and assessments collected by the labor union defendants from their members was, is, and will be transmitted to, or retained by, their respective national or grand lodge organizations.

"29. Railway Labor's Political League was formed for the specific purpose of engaging in political activities dealing with the election of candidates to public office. The organization maintains two funds—one the so-called 'educational' fund and the other the so-called 'free fund'. Railway Labor's Political League received, receives and will receive direct grants into its 'educational' fund.

from the general funds of the union defendants and from the Railway Labor Executives' Association. The monies in the 'educational' fund are used, except in Wisconsin, New Hampshire, Pennsylvania, Indiana, Texas, and Iowa, to support candidates for public office at the State and local level; for publicity to support candidates on the national as well as the State and local level; for administrative expenses to operate Railway Labor's Political League generally (including the salaries of the paid employees of that organization, office expense, supplies, etc.); and for miscellaneous activities in supporting candidates (whom plaintiffs, intervening plaintiffs, and the class they represent oppose) at the national, State or local level, such as transportation of voters to and from the polls, preparation and distribution of voting records, preparation and distribution of sample ballots, and the preparation and distribution of various types of political literature soliciting or influencing support for candidates for public office on the national, State and local levels.

"The administration, operation and maintenance of the 'free' fund activities of Railway Labor's Political League has been, is and will be financed and supported by direct expenditures from the 'educational' fund of Railway Labor's Political League derived from the general dues funds of the labor union defendants.

"43. The funds expended by the labor union defendants for political activities as set forth in this Stipulation of Facts are substantial, and the proportionate amounts of the periodic dues, fees and assessments which are being paid, or which will be required to be paid, by the plaintiffs and intervening plaintiffs and the class they represent are also substantial, and the amounts of such dues which are and will be used ultimately for political purposes are also substantial.

"44. The plaintiffs, intervening plaintiffs, and the class they represent have been and are opposed to the use of their [fol. 426] money by the labor union defendants, Railway Labor Executives Association, Railway Labor's Political League, Machinists Non-Partisan Political League, the American Federation of Labor and Congress of Industrial

Organizations, and the Committee on Political Education of the AFL-CIO which they have been, are and will be required to pay in dues, fees and assessments for endorsement and support of the legislation, ideological political doctrines and candidates for public office have been, are and will be supported and endorsed by labor union defendants, Railway Labor Executives Association, Railway Labor's Political League, Machinists' Partisan Political League, the American Federation of Labor and Congress of Industrial Organizations, Committee on Political Education of the AFL-CIO set out in this Stipulation of Facts, or for other purpose than the negotiation, maintenance and administration of agreements concerning rates of pay, rules and working conditions, or wages, hours, terms and other conditions of employment, or the handling of disputes relating to the above.

"53. The political activities mentioned in this Stipulation of Facts do not involve and are unnecessary for the negotiation, maintenance and administration of agreements concerning rates of pay, rules and working conditions, wages, hours, terms and other conditions of employment or the handling of disputes relating to the above.

"56. The labor union defendants and, in many instances, subsidiary lodges and organizations subject to the provisions of their governing constitutions and by-laws have the power to make assessments and to increase the amount of the dues and fees required for membership in such organizations, and plaintiffs and intervening plaintiffs of the class they represent are and will be required to pay any such increased amounts in order to retain their employment under the terms of the union shop agreements.

"75. In each instance where support of candidates, ideologies, or legislation is referred to in this Stipulation of Facts, such reference is intended to cover not only affirmative support of particular candidates, ideologies, [fol. 427] legislative issues, but also opposition to candidates, ideologies or legislative issues.

"76. The determination of the legislative, political, ideological programs and activities of the labor union

Education and will be for the ideologies and office which used by the es Associationists Non-eration of ns, or the CIO as set poses other stration of d working nditions of ing to the

endants, Railway Labor Executives Association, Railway Labor's Political League, the Machinists Non-Partisan Political League, the AFL-CIO or the latter's Committee on Political Education, as set out in this Stipulation of Facts and the depositions referred to in the Stipulation attached hereto; does not involve participation by the plaintiffs, intervening plaintiffs and the class they represent; the views of plaintiffs, intervening plaintiffs and the class they represent have not been sought; and they have not ratified such activities or programs, nor have they acquiesced therein."

The stipulation also details the amounts of dues or fees paid by named plaintiffs to specific defendant unions under the terms of the bargaining agreement.

The cause, by agreement of the parties, was heard by the court without the intervention of a jury on plaintiffs' prayers for a permanent injunction. After a hearing and argument of counsel, the court entered an order, consisting of findings of fact, conclusions of law, and a final decree granting the relief sought by the plaintiffs. The court found and decreed that: "(1) The court has jurisdiction of all parties and of the causes of action asserted by the plaintiffs. This is a class action in which the plaintiffs represent herein all non-operating employees of the railroad defendants affected by, and opposed to, the herein-after referred to union shop agreements, who also are opposed to the collection and use of periodic dues, fees and assessments for support of ideological and political doctrines and candidates and legislative programs or for other purposes other than the negotiation, maintenance and administration of agreements concerning rates of pay, rules and working conditions, or wages, hours, terms or other conditions of employment or the handling of disputes relating to the above. The individual defendants and labor organization defendants represent all the members of said labor organization defendants; (2) Effective [fol. 428] April 15, 1953, the labor organization defendants, without authority from the employees represented by them but relying upon such authority as might be implied from the Railway Labor Act, and without affording said employees any opportunity to express themselves with re-

spect thereto, entered into union shop agreements with the railroad defendants. The union shop agreements provide, in part, that all non-operating employees of the railroad defendants, including plaintiffs and persons represented by plaintiffs, must 'as a condition of employment subject to such agreements, become members of the organization party to this agreement within sixty (60) calendar days of their craft or class (the labor organization named herein) within sixty (60) calendar days of the date they first perform compensated service as such employees from the effective date of this agreement, and to maintain membership in such organization. 'Nothing in this agreement shall require a person to become or to remain a member of the organization if such membership is not available to such person on the same terms and conditions as are generally available to any other member, or if the membership of such employee is denied or terminated for any reason other than the failure of the employee to tender the initiation fees, and assessments (not including fines or penalties) uniformly required as a condition of obtaining or retaining membership; . . . (4) Pursuant to the union shop agreements, and, except as indicated in paragraph (3) above, each of the plaintiffs and each member of the class they represent has been, is being, and will be, less the injunction requested by them is granted, compelled to pay initiation fees, reinstatement fees, and periodic dues in substantial amounts to the labor organization defendant representing his or her employees, as a condition of employment or continued employment, and to become or remain a member of said labor organization defendant; (5) The funds so exacted from the plaintiffs and the class they represent by the labor organization defendants have been, and are being, used in substantial part by the latter to support the political campaigns of candidates for the offices of President and Vice President of the United States, and for the Senate and House of Representatives of the United States, opposite to the plaintiffs and the class they represent, and also by direct and indirect financial contributions to support the political campaigns of candidates

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lates for State and

local public offices, opposed by plaintiffs and the
they represent. The said funds are so used both by
of the labor union defendants separately and by
the labor union defendants collectively and in co-
among themselves and with other organizations not p-
to this action through associations, leagues, or comm-
formed for that purpose; (6) Those funds have bee-
are being used in substantial amounts to propagate
cal and economic doctrines, concepts and ideologies
to promote legislative programs opposed by plaintiff
the class they represent. Those funds have also bee-
are being used in substantial amounts to impose
plaintiffs and the class they represent, as well as
the general public, conformity to those doctrines, con-
ideologies and programs; (7) The exaction of monies
plaintiffs and the class they represent for the pur-
and activities described above is not reasonably neces-
to collective bargaining or to maintaining the exist-
and position of said union defendants as effective bar-
ing agents or to inform the employees whom said
defendants represent of developments of mutual inter-
(8) The exaction of said money from plaintiffs and
class they represent, in the fashion set forth above
the labor union defendants, is pursuant to the union
agreements and in accordance with the terms and
ditions of those agreements. Said union shop agree-
were negotiated and entered into and are maintained
ministered and enforced by the labor union defen-
pursuant to the provisions of the Railway Labor Act
U.S.C. Sect. 151 et seq.) and particularly Section 2 (F-
(Second), (Third), (Fourth), (Seventh), and (Elev-
5, 6 and 10 thereof. Said union shop agreements are
mitted by Section 2 (eleventh) of the Railway Labor
(45 USC 152) 'notwithstanding any other provision of
Act, or of any other statute or law of the United States
[Vol. 430] or territory thereof, or of any State.' Said
action and use of money and said union shop agree-
and their enforcement are contrary to the Constitution
the law and public policy of this State, and are con-
to the statutes or laws of other states in which the
defendant railroads operate. Said exaction and use of m-

said union shop agreements and Section 1 of the Railway Labor Act and their enforcement against the United States Constitution which in the Ninth and Tenth Amendments thereto guarantee protection from such unwarranted invasion of personal and property rights, (including freedom of expression, freedom of thought, freedom of press, freedom to work and their political rights) under the cloak of federal authority. On the basis of these findings the trial court prohibited the defendants "from enforcing the said agreements (copies of which are attached to the petition herein) and from discharging any member of the class they represent, from becoming or remain members of, or paying dues or assessments to, any of the labor unions mentioned provided, however, that said defendants petition the court to dissolve said injunctions and that they no longer are engaging in the unlawful activities described above." And the court entered money judgments in favor of three plaintiffs.

The union defendants filed their bill of exceptions which they assigned error on interlocutory appeal from the final decree, generally and specially.

1. Error is assigned on the order of the court entered on January 29, 1957, over the objection of the defendants, that it was too late to change the cause of action to the violation of the labor union shop agreement violated the Ninth and Tenth Amendments to the Federal Constitution. This exception cannot be entertained because the order was entered prior to the order dismissing the bill of exceptions which order was reviewed and reversed in *Looper v. Georgia So. & Fla. Ry. Co.*, 210 Ga. 638 (81 S. E. 2d 830) [fol. 431] and the union defendants' motion for review of the order of January 29, 1957, was denied. Therefore, it is too late now to except. See *Carroll v. McClelland*, 213 Ga. 656 (100 S. E. 2d 90).

2. Error is assigned on the order of the court entered on the bill of exceptions to plaintiffs' petition of September 19, 1956, that it was too late to change the cause of action to the violation of the labor union shop agreement violated the Ninth and Tenth Amendments to the Federal Constitution. This exception cannot be entertained because the order was entered prior to the order dismissing the bill of exceptions which order was reviewed and reversed in *Looper v. Georgia So. & Fla. Ry. Co.*, 210 Ga. 638 (81 S. E. 2d 830) [fol. 431] and the union defendants' motion for review of the order of September 19, 1956, was denied. Therefore, it is too late now to except.

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enforcement violate the
the First, Fifth, Ninth
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pt. Gaulding v. Gauld-
Carmichael Tile Co. v.
2d 902).

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ember 23, 1958. In this

amendment certain paragraphs of the petition
leted and new paragraphs inserted. This amer-
out specific facts as to the employment of the
plaintiffs with the railroad defendants, and al-
the dues, fees, and assessments required by the
defendants are being and will be used to espouse a
political and economic ideologies repugnant to
tiffs and the class they represent. It further al-
the sole authority under which the union defend-
ported and purport to bargain and contract wit
road defendants is by virtue of the Railway L
(45 U.S.C.A. §§ 152, 156), and that the union sho
executed by the defendants is contrary to the
public policy of the State of Georgia; and, in
the Railway Labor Act permits or authorizes
defendants to use the dues, fees, and assessm
by union members for ideological and economic
and to support political candidates, which and
plaintiffs oppose, the same violates the provisio
First, Fifth, Ninth, and Tenth Amendments to
eral Constitution. The objections to this amend
on the grounds: that (a) it changed the cause
(b) sought to change the theory of the case,
further relief not theretofore sought, and (d) the
of Federal rights was precluded because of the
motion to remand the case from the Federal Dist

There is no merit in any of these objections.
case was reviewed by this court (Looper v. G
& Fla. Ry. Co., 213 Ga. 279, supra), the plaint
to proceed was sustained by reason of the allega
the agreement violated Federal rights. The a-
merely elaborated the allegations originally asse

[fol. 432] 3. On May 8, 1958, at a pre-trial he-
court granted the plaintiffs' oral motion requiri
fendan. unions to produce books, records, and
over the objection that the defendant unions had
that such a motion would be resented. Subseq
union defendants filed a motion, which was deni
pend this order until their plea of res adjudica
passed upon. (The record discloses that this
subsequently withdrawn.) It is asserted that th

deprived the defendant unions of due the equal protection of the law as guaranteed by the Fourteenth Amendment, in that these rulings denied them an adequate opportunity to defend themselves. The court's exceptions recites that no constitutional error was made or argued to the court, and no objection was made to the introduction of the stipulation of facts. The court asserted that after all the evidence had been heard, the court denied the oral request of the defendant unions to postpone oral argument until the end of the proceedings had been completed and that after the court had orally announced its findings and conclusions, and counsel had presented to the court for its order, the court allowed counsel for the unions insufficient time, before signing the same, to offer objections as to the terms of the court's findings, that this hasty procedure deprived the unions the right to make a proper and adequate defense.

If the legal rights of the parties are denied, this court will not interfere with the action of the trial court in matters of procedure and disposition of causes before it unless the court's power has been exercised in an illegal, arbitrary, or oppressive manner. *Johnson v. Holt*, 3 Ga. 117(1); *24 Ga. 473(3)*; *Mayor &c. of Cuthbert v. City of Cuthbert*, 179(2); *Branch v. Planters' Loan &c. Co.*, 100 Ga. 100. We have carefully considered the error alleged in the manner in which the trial judge heard and disposed of the motions and requests in the trial court. We do not say that his disposition of them was an error [fol. 433] or an abuse of his discretion.

4. We next consider the assignments of error based on specific findings of fact and conclusions of law set out in the final decree. These objections are numbered 5-11 incl., 13-18 incl., and 22 of the bill of exceptions. It would serve no useful purpose to enumerate these objections here. The findings and conclusions are fully supported by the pleadings and evidence, and we find no merit in these assignments.

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of the bill of exceptions.
o enumerate the several
conclusions of the court
gs and the evidence, and
ents of error.

5. As to the provision of the final decree, that it
"as an adjudication of the basic common rights
by the plaintiffs in their own behalf and in behalf
employees of the defendant railroads similarly s
the union defendants assign error on the ground
case cannot properly or lawfully adjudicate right
sons other than the named plaintiffs and interveni
tiffs, because the persons described as constituting
cannot properly constitute a class for the purpose
action," and, "that a class action cannot be br
maintained on behalf of a group, the components
are determined by ascertaining the mental attitud
sons concerning certain matters." The case a
amended was on behalf of plaintiffs and all others
situated, who had a common interest in the relie
No demurrers were interposed that the complaint
a proper class action as permitted under Code
The stipulation of facts contains the following:

"5. There are a substantial number of o
ploys of the railroad defendants who simi'
been compelled by the union shop agreement
their wishes, to become members of the
labor union organizations in order to maint
employment.

"6. There were a substantial number of e
of the railroad defendants whose employment
minated against their wishes, although their
were satisfactory, by reason of the enforce
union shop agreement and the refusal of such
[fol. 434] to become members of the labor,
fendants.

"7. The plaintiffs and intervening plainti
and adequately represent for the purposes of
gation the interests of the employees and fo
ploys of the railroad defendants specified i
preceding paragraphs, as well as those who
as members of one of those two groups has r
been finally determinized, these being all those e
or former employees of the railroad defen

fectd by and opposed to the union shop agreement who also are opposed to the use of the periodic dues, fees and assessments which they have been, are and will be required to pay to support ideological and political doctrines and candidates and legislative programs set forth in this Stipulation of Facts and the depositions referred to in the Stipulation attached hereto, or for other purposes other than the negotiation, maintenance and administration of agreements concerning rates of pay, rules and working conditions, or wages, hours, terms or other conditions of employment or the handling of disputes relating to the above."

The plaintiffs and the class they represent have a common interest in the subject matter of the suit and the ultimate issues decided. The objection interposed to this phase of the decree is without merit. See *O'Jay Spread Co. v. Hicks*, 185 Ga. 507 (195 S. E. 564); *Evans v. Louisville & Nashville Ry Co.*, 191 Ga. 395 (12 S. E. 2d 611); *Liner v. City of Rossville*, 212 Ga. 664 (94 S. E. 2d 862).

6. The court found as a matter of fact: "(6) Those funds have been and are being used in substantial amounts to propagate political and economic doctrines, concepts and ideologies and to promote legislative programs opposed by plaintiffs and the class they represent. Those funds have also been and are being used in substantial amounts to impose upon plaintiffs and the class they represent, as well as upon the general public, conformity to those doctrines, concepts, ideologies and programs; (7) The exaction of monies from plaintiffs and the class they represent for the purposes and activities described above is [fol. 435] not reasonably necessary to collective bargaining or to maintaining the existence and position of said union defendants as effective bargaining agents or to inform the employees whom said defendants represent of developments of mutual interest."

Under our previous ruling (*Looper v. Georgia So. & Fla. Ry. Co.*, 213 Ga. 279, *supra*), that the allegations of the petition were sufficient to state a cause of action for equitable relief, which ruling became the law of the case,

the evidence before the trial court not only authorized, but demanded, a finding that the plaintiffs had proven the case as laid in the amended petition. In the statement of the case we have set out the pertinent portions of the stipulation of facts. The record in this case contains 1,075 pages, which in the main consist of documentary exhibits. To brief the evidence or to state a capsule summary of the same would serve no useful purpose. We have reviewed this evidence. It fully supports the conclusions of the trial court.

7. The court found as a matter of law:

"(8). The exaction of said money from plaintiffs and the class they represent, in the fashion set forth above by the labor union defendants, is pursuant to the union shop agreements and in accordance with the terms and conditions of those agreements.

"Said union shop agreements were negotiated and entered into and are maintained, administered and enforced by the labor union defendants and the railroad defendants pursuant to the provisions of the Railway Labor Act (45 U. S. C. sect. 151 et seq) and particularly section 2 (First), (Second), (Third), (Fourth), (Seventh) and (Eleventh), 5, 6 and 10 thereof.

"Said union shop agreements are permitted by Section 2 (eleventh) of the Railway Labor Act (45 U. S. C. 152) 'notwithstanding any other provision of this Act, or of any other statute or law of the United States, or territory thereof, or of any State.'

"Said exaction and use of money and said union shop agreements and their enforcement are contrary to the Constitution, the law and public policy of this State, and are contrary to the statutes or laws of other states in which the defendant railroads operate. Said [fol. 436] exaction and use of money, said union shop agreements and Section 2 (eleventh) of the Railway Labor Act and their enforcement violate the United States Constitution which in the First, Fifth, Ninth and Tenth Amendments thereto guarantees to indi-

viduals protection from such unwarranted invasion of their personal and property rights, (including freedom of association, freedom of thought, freedom of speech, freedom of press, freedom to work and their political freedom and rights) under the cloak of federal authority." Division 11 of the bill of exceptions assigns error on this conclusion.

In our opinion it cannot be disputed that the union agreement between the railroad and union defendants was executed only by virtue of section 2 (Eleventh) of the Railway Labor Act (45 U. S. C. A. § 152). If that section of the Federal act permits or allows the defendants to make contracts in violation of the constitutional rights of the plaintiffs, they have the right to challenge the validity of the contract in so far as it may infringe their rights under the Federal Constitution. *Railway Emp. Dept. v. Hanson*, 351 U. S. 225 (76 S. Ct. 714, 100 Ed. 1112); *American Communications Association v. Douds*, 339 U. S. 382 (70 S. Ct. 674, 94 L. Ed. 925); *St. Louis v. L. & N. Ry. Co.*, 323 U. S. 192 (65 S. Ct. 226, 89 Ed. 173).

The fundamental constitutional question is: Does a contract between the employers of the plaintiffs and union defendants, which compels these plaintiffs, if they continue to work for the employers, to join the unions, to support their respective crafts, and pay dues, fees, and assessments to the unions, where a part of the same will be used to support political and economic programs and candidates for public office, which the plaintiffs not only do not approve but oppose, violate their rights of freedom of speech and deprive them of their property without due process of law under the First and Fifth Amendments of the Federal Constitution?

The Bill of Rights does not confer rights. They are "shall nots" of what the government, its agents, or those acting under the aegis of its authority, cannot do respecting [fol. 437] the enumerated rights of the individual. The Declaration of Independence contained 27 specifications of the wrongs that the English King and Parliament had inflicted upon individuals living in the American

Colonies. Magna Carta was a declaration of protest against trespass by government on the rights of individuals, and an affirmation of the natural rights of man so forthrightly set forth more than five hundred years later in the Bill of Rights. Chapter 39 of Magna Carta declared: "No freeman shall be taken or imprisoned or dis-seized of his freehold or liberties or free customs, or outlawed or exiled or in any way destroyed; nor shall one go upon him, nor send upon him but by the lawful judgment of his peers or by law of the land."

During Georgia's colonial period, its citizens were taxed to pay for the support of one religious denomination to the exclusion of others. To guarantee the people of the State that no one should ever be compelled to attend or support any church, contrary to his own faith and judgment, and to restrain the arm of government from ever attempting, directly or indirectly, to mould the religious beliefs of the people, the Constitution of Georgia of 1798 contained this provision: "No person within this State shall, upon any pretense, be deprived of the inestimable privilege of worshipping God in a manner agreeable to his own conscience, nor be compelled to attend any place of worship contrary to his own faith and judgment; nor shall he ever be obliged to pay tithes, taxes, or any other rate, for the building or repairing any place of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or hath voluntarily engaged to do. No one religious society shall ever be established in this State, in preference to another; nor shall any person be denied the enjoyment of any civil right merely on account of his religious principles." Art. 4, sec. 10.

The Bill of Rights preserves the untouchable rights of the individual where, in their exercise, no harm or injury results to others or to the public. Coercion or compulsion is the antithesis of freedom or liberty. In the area of choice, support or association of or with the political or [fol. 438] economic views of others, the individual has the natural right not only to disagree but to rebel against either regimentation or restraint in the exercise of his own judgment. Mr. Justice Douglas in his dissenting

opinion in *Public Utilities Commission of the District of Columbia v. Pollak*, 343 U. S. 451 (72 S. Ct. 813, 94-1068), in discussing the meaning of liberty as used in the Fifth Amendment, said: "The right to be let alone is indeed the beginning of all freedom. . . . Compulsion which comes from circumstances can be as real as compulsion which comes from a command."

Certain observations of the late Mr. Justice Jackson, in writing the majority opinion for the court in *West Virginia Board of Education v. Barnette*, 319 U. S. 264, 63 S. Ct. 1178, 87 L. Ed. 1628), a case involving the constitutionality of rules adopted by a local board of education under authority of a state statute, requiring students in public schools to salute the flag and pledge allegiance to the United States, upon penalty of expulsion for refusal to comply, are worthy of repetition here. In holding that such compulsory action violated the First and Fourteenth Amendments, Mr. Justice Jackson said: "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials, to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no election." [at page 638]. . . . Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard [at page 641]. . . . We hold that government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent [at page 641]. . . . If there is no star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur [at page 642]."

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One who is compelled to contribute the fruits of his labor to support or promote political or economic programs or support candidates for public office is just as much deprived of his freedom of speech as if he were compelled to give his vocal support to doctrines he opposes. Abraham Lincoln asserted a similar view when he said: "I believe each individual is naturally entitled to the fruits of his labor, so far as it in no wise interferes with any other man's right." There is a common saying, that "Money talks—sometimes louder than the spoken word." In the case at bar, the personal convictions of the plaintiffs on political and economic issues are being combatted by the use of their financial contributions to foster programs and ideologies which they oppose.

This is not a case where the plaintiffs are seeking employment with the railroads which have union shop agreements providing that, to be employed, they would be required to join a union, but one where they were in the employ of the railroads at the time the union shop agreements were entered into between the defendants. They are now confronted with the choice of either joining the union or surrendering their jobs and benefits that come from tenure of service, and seeking work elsewhere. If the requirement by the employer of his employee, as a condition of his employment, that he agree not to join a union, subjecting himself to be discharged if he did (now forbidden by the Railway Labor Act, 45 U.S.C.A. § 152, and the National Labor Relations Act, 29 U.S.C.A. § 157), is obnoxious to the employee's economic freedom to contract, then the requirement by the employer, based upon an act of the Federal Congress, that one in his employ as a condition of continued employment, would be compelled to join a union and pay dues, fees, and assessments which will be used in part for the support of ideologies he opposes, is likewise violative of his freedom to contract under the Fifth Amendment.

[fol. 440] While these observations on the Bill of Rights may appear as being old-fashioned and representative of the views of statesmen and judges long since dead, and not in harmony with some schools of thought that maintain that the Constitution must be construed or applied to

meet new conditions in the light of present-day times and that the Constitution must be expanded or contracted—as if it were an elastic girdle—to accommodate the public diet, we will continue to adhere to the view that the Constitution can be changed only by the method provided therein.

In the light of our prior decision in this case and as has been said above, and the evidence in this case, the final decree was not erroneous for any reason assigned.

Judgment affirmed. All the Justices concur.

[fol. 441]

IN THE SUPREME COURT OF GEORGIA

JUDGMENT—May 8, 1959

The Honorable Supreme Court met pursuant to its regular term. The following judgment was rendered:

**INTERNATIONAL ASSOCIATION OF MACHINISTS, et al.
vs.
STREET et al.**

This case came before this court upon a writ of certiorari from the Superior Court of Bibb County; and after full argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur.

[fol. 442]

IN THE SUPREME COURT OF GEORGIA

No. 20428

INTERNATIONAL ASSOCIATION OF MACHINISTS, et al.,
Plaintiffs-in-Error

v.

S. B. STREET, et al., Defendants-in-Error.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES—Filed June 5, 1959

I.

Notice is hereby given by the following defendants in the Superior Court of Bibb County, Georgia, and plaintiffs-in-error in the Supreme Court of Georgia:

International Association of Machinists; International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America; International Brotherhood of Blacksmiths, Drop Forgers and Helpers; Sheet Metal Workers International Association; International Brotherhood of Electrical Workers; Brotherhood of Railway Carmen of America; International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers; Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees; Brotherhood of Maintenance of Way Employees; Order of Railroad Telegraphers; Brotherhood of Railroad Signalmen of America; National Organization Masters, Mates and Pilots; National Marine Engineers Beneficial Association; American Train Dispatchers Association; Railroad Yardmasters of America; L. C. Ritter; R. H. Hubbard; Norman Dugger; J. R. Westbrook; John Pelkafer; T. B. Steadman; C. J. Brice; C. D. Bruns; W. G. Roberts; H. H. Dent; J. J. Duffy; B. R. Acuff; T. J. Roberts; Irvin Barney; W. W. Dyke;

W. B. Chapman; Anthony Matz; J. Craig; George M. Harrison; G. A. J. P. Alexander; G. W. Ball; R. Gardner; H. R. Duensing; E. V. E. C. Melton; F. O. Dasher; B. T. Bishop; W. L. Ball; Wm. O. Holm; R. M. Crawford; T. W. Grimmett; Ivey; T. J. Dame; and Charles J.

that they hereby appeal to the Supreme Court of the United States from the final judgment of the Court of Georgia entered in this action affirming a judgment of the Superior Court of Georgia, permanently enjoining the performance of shop agreements between

Georgia Southern and Florida Railway Company; Cincinnati and Texas Pacific Railway; Alabama Railroad Company; New Orleans and Gulf Railroad Company; Carolina and Florida Railway Company; New Orleans Terminal Company; Johns River Terminal Company; and Eastern Railroad Company;

and

International Association of Machinists; Brotherhood of Boilermakers, Ironworkers and Shipbuilders of America; International Brotherhood of Blacksmiths, Drop Forgers and Helpers; International Association of Workers; International Association of Brotherhood of Electrical Workers; Brotherhood of Railway Carmen of America; International Brotherhood of Firemen, Oilers, Helpers and Railway Shop Laborers; Brotherhood of Steamship Clerks, Freight Handlers, Station Employees; Brotherhood of [fol. 444] Way Employees; Order of Rappers; Brotherhood of Railroad America; National Organization of Pilots; National Marine Engineers Association; American Train Dispatchers Association; and Road Yardmasters of America;

J. H. Desotell; Lewis
A. Link; J. D. Avers;
R. K. Lanfair; F. G.
V. Peed; Jesse Clark;
E. T. Hurst; John M.
Holmes; O. H. Braese;
t; M. G. Schoch; H. E.
J. MacGowan;

Supreme Court of the
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ction on May 8, 1959,
Court of Bibb County,
performance of union-

a Railway Company;
ncinnati, New Orleans
abama Great Southern
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terminal Company; St.
; Harriman and North-

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ers Association; Rail-

declaring section 2, Eleventh of the Railway
to be unconstitutional to the extent that it pe
collection of funds under a union shop agreeem
expenditure of a portion of such funds in legislat
cal, and other activities other than the negoti
administration of collective bargaining agreemen
ing the said union shop agreements null and void
the enforcement of said union shop agreements
and awarding plaintiffs damages in the amount o
and fees they had paid while the enforcement of
shop agreements was not enjoined.

This appeal is taken pursuant to 28 U.S.C. §
and 1257 (2).

II.

The Clerk of the Supreme Court of Georgia v
prepare a transcript of the record in this case
mission to the Clerk of the Supreme Court of t
States, and include in said transcript the Tab
tents of the record certified to the Supreme
Georgia, volume I of said record (containing
ings and orders of the Superior Court), Plain
hibit 1, the Bill of Exceptions filed by appel
judgment and opinion of the Supreme Court o
and a copy of this Notice of Appeal and proof

III.

The following questions are presented by this

1. Whether the Supreme Court of Georgia
holding the union-shop amendment to the Railv
Act (as amended, sec. 2, Eleventh, Act of Jan
64 Stat. 1238, U.S.C. tit. 45, § 152, Eleventh) v
tional and invalid.

2. Whether the Supreme Court of Georgia
holding that union-shop agreements entered into
to the Railway Labor Act are unconstitutional a

3. Whether the Supreme Court of Georgia
[fol. 445] holding Georgia law and the laws of o
valid and applicable to union-shop agreements

carrier subject to the Railway Labor Act designated representatives of its employees acknowledged repugnance of such law so that 2, Eleventh of the Railway Labor Act repugnance to the Constitution of the United States on the reason of Congressional preemption of the field.

4. Whether the Supreme Court of the United States affirming a judgment permanently enjoining the making of union-shop agreements subject to a writ with the Railway Labor Act.

5. Whether the Supreme Court of the United States holding that the use, by unions having a union shop agreement, of a part of its dues receipts for purposes other than the negotiation and administration of collective bargaining agreements concerning pay, hours, and conditions, violates constitutional rights under the First and Fifth Amendments of employees subject to a union shop agreement.

6. Whether the Supreme Court of the United States holding that the decision of the Supreme Court of the United States in *Railway Employees' Department v. United States*, 225 U.S. 225, is inapplicable where it is found that a union having a union-shop agreement spends part of its dues for political and legislative purposes.

7. Whether the Supreme Court of the United States sustaining the same findings of fact with respect to the union defendants.

8. Whether the Supreme Court of the United States sustaining findings of fact not supported by the evidence.

9. Whether the Supreme Court of the United States holding that the plaintiffs in the trial court were not entitled to sue unions not representatives of the class of employees employed with respect to collective bargaining agreements not affecting them.

10. Whether the Supreme Court of the United States holding that a class action may properly be maintained on behalf of persons whose membership in the class is not ascertainable.

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employees, despite the
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Georgia erred in
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Dept. v. *Hanson*, 351
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mined by ascertaining a combination of mental at
of each person.

11. Whether the Supreme Court of Georgia erred
[fol. 446] holding appellants were not denied due
of law in defending this action by procedural rule
the trial court.

International Association of Machinists; Intern
Brotherhood of Boilermakers; Iron Ship Build
Helpers of America; International Brotherh
Blacksmiths, Drop Forgers and Helpers; Shee
Workers International Association; Intern
Brotherhood of Electrical Workers; Brotherh
Railway Carmen of America; International B
hood of Firemen, Oilers, Helpers, Roundhou
Railway Shop Laborers; Brotherhood of Railw
Steamship Clerks, Freight Handlers, Express a
tion Employees; Brotherhood of Maintenance
Employees; Order of Railroad Telegraphers; B
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Dispatchers Association; Railroad Yardmas
America; L. C. Ritter; R. H. Hubbard; Norma
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C. J. Brice; D. C. Bruns; W. G. Roberts; H. H
J. J. Duffy; B. R. Acuff; T. J. Roberts; Irvin I
W. W. Dyke; W. B. Chapman; Anthony Matz
Desotell; Lewis Craig; George M. Harrison;
Link; J. D. Avers; J. P. Alexander; G. W. Ball
Lanfair; F. G. Gardner; H. R. Duensing; E. V
Jesse Clark; E. C. Melton; F. O. Dasher; B. T.
John M. Bishop; W. L. Ball; William O. H
O. H. Braese; R. M. Crawford; T. W. Grimmett
Schoch; H. E. Ivey; T. J. Dame; and Charles
Gowan, Appellants.

Milton Kramer, Schoene and Kramer, 1625 K
N. W., Washington 6, D. C.

Cleburne E. Gregory, Jr., Arnall, Golden & G
807 Fulton Federal Building, Atlanta, G
Their Attorneys.

[fol. 447] CERTIFICATE OF SERVICE (omitted)

[fol. 448] [File endorsement omitted]

[fol. 458] Clerk's Certificate to file
(omitted in printing).

[fol. 459] _____

SUPREME COURT OF THE UNITED STATES

No. 258—October Term, 1901

INTERNATIONAL ASSOCIATION OF MAJESTY
Appellants,

vs.

S. B. STREET, et al.

ORDER NOTING PROBABLE JURISDICTION—

Appeal from the Supreme Court of the District of Columbia

The statement of jurisdiction in this case
submitted and considered by the Court
is noted.

October 1, 1901

omitted in printing)

mitted]

foregoing transcript

UNITED STATES

m, 1959

MACHINISTS, et al.,

al.

on—October 12, 1959

of the State of Georgia

this case having been
court, probable jurisdic

October 12, 1959

[fol. 994]

PLAINTIFFS' EXHIBIT No. 487

IN THE SUPERIOR COURT OF BIBB COUNTY,

Case No. 16,537

NANCY M. LOOPER, et al.,

v.

GEORGIA SOUTHERN & FLORIDA RAILWAY COM

PLAINTIFFS' FIRST REQUEST FOR ADMIS

To: Mr. Milton Kramer
Schoene & Kramer
1625 K Street, N. W.
Washington 6, D. C.

Mr. David L. Mincey
321 Cotton Avenue
Macon, Georgia

Attorneys for the Labor Union De

Please take notice that the plaintiffs hereby
pursuant to the provisions of Section 81-1011
of Georgia Annotated, to admit, within ten (10)
service upon you of this request, for the pu
[fol. 995] above-entitled action only, and subje
tinent objections to admissibility which may b
at the trial, that each and all, of the matter
forth in this request are true and correct:

(a) The Committee on Political Education
(COPE) expended the amounts of money here
on the dates shown, and to the party listed
amounts specified, in each of the following insta

<i>Date</i>	<i>Name of Payee</i>	<i>Purpose</i>	<i>Amount</i>
1/7/57	W. Morse Deficit Committee	Contribution	\$5,000
1/11/57	Wm. F. Schnitzler, AFL-CIO	Life Insurance & Hospital Coverages	2,622
2/14/57	Montoya Congressional Committee	Contribution	500
3/6/57	Texas AFL-CIO Joint Committee	Contribution— R. Yarborough	5,000
3/6/57	Texas AFL-CIO Joint Committee	Contribution— R. Yarborough	5,000
3/21/57	Texas State Industrial Council	Contribution— Yarborough	650
3/22/57	Joe M. Montoya	Contribution	500
3/22/57	New Mexico State AFL-CIO	Contribution— J. M. Montoya	500
4/3/57	Independent Committee for Morse	Contribution	3,000
8/1/57	AFL-CIO	Reimbursement of salaries & pension	6,000
8/21/57	Proxmire for Senate Committee	Contribution	4,000
[fol. 996]			
3/14/56	Wilbur Nolen	Primary Campaign 2nd Congressional District	\$ 500
4/4/56	North Carolina Labor's League for Political Education	6th Cong. Dist. Campaign for Ralph Scott	1,000
4/4/56	North Carolina Labor's League for Political Education	Campaign of Hugh Wells, 11th Cong. Dist.	1,000
4/4/56	North Carolina Labor's League for Political Education	Campaign of Charles Deane, 8th Cong. Dist.	1,000

Date	Name of Payee	Purpose	Amount
4/4/56	Alabama Labor's League for Political Education	Campaign of James T. Hamrick 1st Cong. Dist.	500.00
11/56	Alabama Labor's League for Political Education	Campaign of Wilbur Nolen, 2nd Cong. Dist.	500.00
12/54	Dallas County Committee on Political Education	Campaign of Henry Wade, 5th Cong. Dist.	500.00
13/56	The Citizens Registration Committee	Promotion drives to register people for voting	1,600.00
.997]			
26/56	Lankford for Congress Committee	Campaign	\$500.00
4/56	Staggers for Congress Committee	Campaign	500.00
8/56	Allman for Congress Committee	Campaign	1,000.00
4/56	District of Columbia Commit- tee for Representative Government	Contribution	4,500.00
4/56	North Carolina Labor's League for Political Education	Congressional Campaigns	2,500.00
4/56	North Carolina CIO Political Action Committee	Congressional Campaign	2,500.00
9/56	Volunteer Committee for Perkins	Campaign	500.00
3/56	District of Columbia Com- mittee for Representative Government	Contribution	500.00

<i>Date</i>	<i>Name of Payee</i>	<i>Purpose</i>
5/24/56	Ralph Scott for Congress Committee	Campaign Contribution
6/1/56	Citizen for Donoghue	Campaign Contribution
6/14/56	Re-elect Senator Wayne Morse Committee	Contribution
6/15/56	James V. Day	1st Cong. Dist. Contribution
6/20/56	Illinois State CIO-PAC	Contribution Imple 23rd Cong. Dist.
[fol. 998]		
6/29/56	Sabine Area Committee on Political Education	Contribution Brooks 2nd Cong. Dist.
7/2/56	Texas AFL-CIO Joint Committee	Contribution Congressional Campaign
7/10/56	Montana AFL-CIO and Committee on Political Education	Contribution Anderson 2nd Cong. Dist.
7/10/56	Rosen for Congress Club	Contribution 14th Cong. Dist.
7/17/56	Sabine Area Committee on Political Education	Contribution Brooks 2nd Cong. Dist.
7/17/56	Arkansas State Committee on Political Education	Contribution Jones 6th Cong. Dist.
7/17/56	Railway Labor's Political League	Contribution
7/20/56	Ross Bass Committee	Contribution 6th Cong. Dist.
8/3/56	Connecticut State PAC	Contribution War 1st Cong. Dist.

Amount	Date	Name of Payee	Purpose	Amount
1,000	3/56	James Oliver Campaign Committee	Contribution 1st Cong. Dist.	1,000.00
250	2/56	Committee for F. Coffin for Congress	Contributions 2nd Cong. Dist.	1,000.00
5,000	999]			
500	8/56	Textile Workers Union of America Political Education Fund	Contribution	\$2,000.00
1,000	10/56	Richards for Senate Committee	Contribution	5,000.00
	10/56	Dodd for Senate Committee	Contribution	5,000.00
	10/56	Stengel for Senate Committee	Contribution	5,000.00
450	10/56	Wickard for Senate Campaign Committee	Contribution	5,000.00
10,000	10/56	R. M. Evans for Senate Committee	Contribution	5,000.00
	10/56	Clements Campaign Committee	Contribution	5,000.00
1,000	10/56	Connecticut State PAC	Contribution Ward 1st Cong. Dist.	1,000.00
500	10/56	Magnuson Campaign Fund	Contribution	5,000.00
300	10/56	K. Holum for Senate Committee	Contribution	3,000.00
	10/56	Clark for Senate Committee	Contribution	5,000.00
	10/56	Q. Burdick Campaign Fund	Contribution	1,000.00
500	5/56	Central Maryland IUC-PAC	Contribution	500.00
2,000	1000]			
	5/56	Maryland State IUC-PAC	Contribution	1,000.00
1,000	10/56	Staggers for Congress Committee	Contribution 2nd Cong. Dist.	750.00

<i>Date</i>	<i>Name of Payee</i>	<i>Purpose</i>
8/20/56	Burnside for Congress Committee	Contribution Contribution
8/20/56	Reuss for Congress Committee	Contribution 5th Cong. Di
8/20/56	Johnson for Congress Club	Contribution 9th Cong. Di
8/27/56	G. Pfost Campaign Committee	Contribution 1st Cong. Di
8/27/56	J. C. Murray Campaign Account	Contribution 3rd Cong. D
8/27/56	Hinko for Congress Committee	Contribution 4th Cong. D
8/27/56	Pucinski for Congress Campaign	Contribution 11th Cong. I
8/27/56	C. Boyle for Congress Committee	Contribution 12th Cong. D
8/27/56	Citizens for Peter Mack, Jr.	Contribution 21st Cong. D
8/27/56	K. Gray for Congress Committee	Contribution 25th Cong. I
8/27/56	H. Fox Campaign Fund	Contribution 1st Cong. Di
8/27/56	Lankford for Congress Committee	Contribution 5th Cong. D
[fol. 1001]		
8/27/56	Foley for Congress Committee	Contribution 6th Cong. Di
8/27/56	Brademas for Congress Committee	Contribution 3rd Cong. D
8/27/56	Committee to Elect Whitehead	Contribution 5th Cong. Di

		<i>Name of Payee</i>	<i>Purpose</i>	<i>Amount</i>
tion g. Dist.	1/56	King for Congress Club	Contribution 6th Cong. Dist.	500.00
tion g. Dist.	1/56	Hill Congressional/Campaign Committee	Contribution 7th Cong. Dist.	500.00
tion g. Dist.	1/56	W. K. Denton	Contribution 8th Cong. Dist.	500.00
tion g. Dist.	1/56	Ulrich for Congress Committee	Contribution 9th Cong. Dist.	500.00
tion g. Dist.	1/56	Committee to Elect Carnony for Congress	Contribution 10th Cong. Dist.	500.00
tion g. Dist.	1/56	Caroey Congressional Campaign Fund	Contribution 11th Cong. Dist.	500.00
tion g. Dist.	1/56	L. Anderson Campaign Committee	Contribution 2nd Cong. Dist.	500.00
tion g. Dist.	1/56	Committee to Re-Elect E. Green	Contribution 3rd Cong. Dist.	1,000.00
tion g. Dist.	1/56	Lee Congressional Campaign Fund	Contribution 1st Cong. Dist.	500.00
tion g. Dist.	1/56	Allman for Congress Committee	Contribution 2nd Cong. Dist.	500.00
tion g. Dist.	1002]			
tion g. Dist.	1/56	Committee for Porter for Congress	Contribution 4th Cong. Dist.	\$ 500.00
tion g. Dist.	1/56	Fogarty Congressional Committee	Contribution 2nd Cong. Dist.	500.00
tion g. Dist.	1/56	G. McGovern for Congress	Contribution 1st Cong. Dist.	1,000.00
tion g. Dist.	1/56	Whitehead for Congress	Contribution 6th Cong. Dist.	1,000.00
tion g. Dist.	1/56	Jennings Congressional Campaign Fund	Contribution 9th Cong. Dist.	1,000.00

<i>Date</i>	<i>Name of Payee</i>	<i>Purpose</i>
8/27/56	Quenstedt Congressional Campaign Fund	Contribution 10th Cong. D
8/27/56	J. A. O'Callaghan	Contribution Cong. at larg
8/27/56	Bennet 2nd District Committee	Contribution 2nd Cong. D
8/27/56	Martin for Congress Campaign Committee	Contribution 5th Cong. D
8/27/56	Kuta for Congress Campaign Fund	Contribution Cong. at larg
8/27/56	Ward for Congress Campaign Committee	Contribution 1st Cong. D
8/27/56	D. J. Flood Campaign Committee	Contribution 11th Cong. D
[fol. 1003]		
8/27/56	Hon. J. M. Quigley	Contribution 19th Cong. D
8/27/56	Hon. F. M. Clark	Contribution 25th Cong. I
8/27/56	Fullam Congressional Campaign Committee	Contribution 8th Cong. D
8/31/56	F. Church for Senate Committee	Contribution
8/31/56	W. Morse Political Committee	Contribution
8/31/56	Ardery for Congress Campaign Committee	Contribution 3rd Cong. D
9/5/56	Moreland for Congress Committee	Contribution 1st Cong. D
9/5/56	Quinney for Congress Committee	Contribution 6th Cong. D

	Amount	Date	Name of Payee	Purpose	Amount
se tion g. Dist.	1.00	5/56	Cross Campaign Committee	Contribution 7th Cong. Dist.	500.00
tion large	1.00	5/56	McFall 11th District Committee	Contribution 11th Cong. Dist.	1,000.00
tion g. Dist.	3.00	5/56	B. F. Sisk for Congress Committee	Contribution 12th Cong. Dist.	500.00
tion g. Dist.	3.00	5/56	W. K. Stewart Campaign Committee	Contribution 13th Cong. Dist.	1,000.00
tion large	1.00	5/56	McDowell for Congress Committee	Contribution Cong. at large	1,000.00
tion g. Dist.	1.00	1004]			
tion g. Dist.	1.00	5/56	Giaimo for Congress Campaign Committee	Contribution 3rd Cong. Dist.	\$1,000.00
tion g. Dist.	1.00	5/56	R. Weir Campaign Fund	Contribution 3rd Cong. Dist.	1,000.00
tion g. Dist.	\$1.00	5/56	Robbie for Congress Committee	Contribution 5th Cong. Dist.	1,000.00
tion g. Dist.	1.00	5/56	Re-elect Coxa to Congress Committee	Contribution 9th Cong. Dist.	1,000.00
tion g. Dist.	1.00	5/56	Magnuson Campaign Fund	Contribution	1,000.00
tion	5.00	5/56	McCoy for Congress Committee	Contribution 3rd Cong. Dist.	1,000.00
tion	2.00	5/56	Aspinall for Congress Committee	Contribution 4th Cong. Dist.	1,000.00
tion g. Dist.	1.00	5/56	Hon. B. O'Hara	Contribution 2nd Cong. Dist.	500.00
tion g. Dist.	1.00	5/56	H. A. Williams Campaign Committee	Contribution	1,000.00
tion g. Dist.	1.00	5/56	Haroldson for Congress Committee	Contribution 7th Cong. Dist.	500.00
tion g. Dist.	1.00	5/56	Mahoney for Congress Committee	Contribution 1st Cong. Dist.	1,000.00

<i>Date</i>	<i>Name of Payee</i>	<i>Pur</i>
9/19/56	Johnson for Congress Committee	Contr 2nd C
9/19/56	W. K. Denton	Contr 8th C
[fol. 1005]		
9/19/56	Patterson for Congress Committee	Contr 3rd C
9/19/56	Polk Congressional Campaign Fund	Contr 6th C
9/19/56	Ashley Campaign Fund	Contr 9th C
9/19/56	Rosen for Congress Club	Contr 14th C
9/19/56	J. McSweeney for Congress Committee	Contr 16th C
9/19/56	Michigan PAC	Contr Cong.
9/19/56	Michigan Labor's League for Political Education	Contr Cong.
9/19/56	Fogarty Congressional Campaign Committee	Contr 2nd C
9/19/56	Miller for Congress Committee	Contr 1st C
9/19/56	W. Boring for Congress Committee	Contr Cong.
9/19/56	Wolf for Congress Club	Contr 2nd C
9/19/56	Denman for Congress Committee	Contr 5th C
9/19/56	Coad Congressional Campaign Fund	Contr 6th C

<i>Purpose</i>	<i>Amount</i>	<i>Date</i>	<i>Name of Payee</i>	<i>Purpose</i>	<i>Amount</i>
Contribution 1st Cong. Dist.	\$	9/56	Mahoney for Senate Campaign Committee	Senatorial Contribution	\$
Contribution 1st Cong. Dist.	100	9/56	Friedel for Congress Committee	Contribution 7th Cong. Dist.	
Contribution 1st Cong. Dist.	\$100	9/56	J. C. Carroll Senate Campaign Fund	Senatorial Contribution	
Contribution 1st Cong. Dist.	100	10/56	C. M. Bailey	Contribution 3rd Cong. Dist.	
Contribution 1st Cong. Dist.	100	10/56	Textile Workers Union of America Political Educa- tion Fund	Contribution	
Contribution 1st Cong. Dist.	50	11/56	National Non-Partisan Issues Commission	Contribution	
Contribution 1st Cong. Dist.	20	5/56	A. Chapin	Campaign Expenses	
Contribution 1st Cong. at large	100	6/56	Doalan for Congress Committee	Contribution 14th Cong. Dist.	
Contribution 1st Cong. at large	20	7/56	G. McGovern for Congress Committee	Contribution 1st Cong. Dist.	
Contribution 1st Cong. Dist.	50	8/56	Arthur Chapin	Campaign Expenses	
Contribution 1st Cong. Dist.	100	8/56	Maryland CIO-PAC	Contribution	
Contribution 1st Cong. at large	20	9/56	Aspinall for Congress Committee	Contribution 4th Cong. Dist.	
Contribution 1st Cong. Dist.	100	9/56	Gronning for Congress Committee	Contribution 1st Cong. Dist.	
Contribution 1st Cong. Dist.	100	9/56	McConkie Campaign Committee	Contribution 2nd Cong. Dist.	
Contribution 1st Cong. Dist.	100	1007]			
Contribution 1st Cong. Dist.	100	9/56	K. Holum for Congress Committee	Contribution Cong. at large	\$

<i>Date</i>	<i>Name of Payee</i>	<i>P</i>
10/2/56	Eastman Congressional Campaign Committee	Cont 2nd
10/2/56	Porter for Congress Committee	Cont 4th
10/2/56	Moreland for Congress Committee	Cont 1st
10/2/56	Q. Burdick Campaign Fund	Senat Cont
10/2/56	Geeland for Congress Committee	Cont Cong
10/2/56	Hocking Congressional Campaign Fund	Cont Cong
10/2/56	W. Boring for Congress Committee	Cont Cong
10/2/56	J. Benesch for Congress Fund	Cont 2nd
10/2/56	L. Anderson Campaign Committee	Cont 2nd
10/2/56	Robbie for Congress Committee	Cont 5th
10/2/56	Haroldson for Congress Committee	Cont 7th
10/2/56	Re-elect Coya to Congress Committee	Cont 9th
[fol. 1008]		
10/2/56	Macdonal for Congress Committee	Cont 8th
10/2/56	J. Holtz for Congress Committee	Cont 10th
10/2/56	Mahoney for Senate Campaign Committee	Cont

<i>Purpose</i>	<i>Amount</i>	<i>Date</i>	<i>Name of Payee</i>	<i>Purpose</i>	<i>Amount</i>
Contribution nd Cong. Dist.	\$	2/56	Montgomery Congressional Fund.	Contribution 4th Cong. Dist.	
Contribution th Cong. Dist.	\$	2/56	Breeding for Congress Committee	Contribution 5th Cong. Dist.	
Contribution st Cong. Dist.	\$	2/56	Mahoney 6th Dist. Fund	Contribution 6th Cong. Dist.	
Senatorial Contribution	15	2/56	Wickard for Senate Committee	Contribution	
Contribution ong. at large	\$	2/56	Brademas for Congress Committee	Contribution 3rd Cong. Dist.	
Contribution ong. at large	\$	2/56	Carney Congressional Campaign Fund	Contribution 11th Cong. Dist.	
Contribution ong. at large	15	2/56	Clark for Senate Fund	Contribution	
Contribution nd Cong. Dist.	10	2/56	Fullam Congressional Campaign Fund	Contribution 8th Cong. Dist.	
Contribution nd Cong. Dist.	\$	2/56	D. J. Flood Campaign Committee	Contribution 11th Cong. Dist.	
Contribution th Cong. Dist.	10	2/56	Herschberger for Con- gress Committee	Contribution 18th Cong. Dist.	
Contribution th Cong. Dist.	10	2/56	Hon. J. M. Quigley	Contribution 19th Cong. Dist.	
Contribution th Cong. Dist.	\$	1009]	Thomas for Congress Committee	Contribution 24th Cong. Dist.	
Contribution th Cong. Dist.	\$	2/56	Hon. F. M. Clark	Contribution 25th Cong. Dist.	\$
Contribution th Cong. Dist.	\$	2/56	Holland for Congress Committee	Contribution 30th Cong. Dist.	
Contribution 10th Cong. Dist.	\$	2/56	Campaign Fund of P. W. Rodino, Jr.	Contribution 10th Cong. Dist.	
Contribution	10	2/56	F. Church for U. S. Senate	Contribution	

<i>Date</i>	<i>Name of Payee</i>
10/2/56	O'Callaghan for Congress Fund
10/2/56	Staggers for Congress Committee
10/2/56	Burnside for Congress Committee
10/2/56	Magnuson Campaign Fund
10/2/56	McCoy for Congress Committee
10/2/56	Whitehead for Congress Committee
10/2/56	Lankford for Congress Committee
10/2/56	Foley for Congress Committee
10/2/56	Wetherby for Senate Fund
10/2/56	J. C. Marray Campaign Account
[fol. 1010]	
10/2/56	Hinko for Congress Committee
10/2/56	Yates Congressional Campaign Fund
10/2/56	Pusinski for Congress Campaign Fund
10/2/56	C. Boyle for Congress Campaign Fund
10/2/56	Allen for Congress Committee
10/2/56	Citizens Committee for P. Mack, Jr.

Purpose	Amount	Date	Name of Payee
Contribution Cong. at large	1.00	2/56	K. Gray for Congress Committee
Contribution 2nd Cong. Dist.	3.00	2/56	G. Pfost Campaign Committee
Contribution 4th Cong. Dist.	1.00	2/56	Reynolds Campaign Fund
Contribution	1.00	2/56	Dodd for Senate Committee
Contribution 3rd Cong. Dist.	1.00	2/56	Ward for Congress Committee
Contribution 6th Cong. Dist.	5.00	2/56	Bennett 2nd Dist. Committee
Contribution 5th Cong. Dist.	5.00	2/56	Giaimo for Congress Campaign Fund
Contribution 6th Cong. Dist.	5.00	2/56	Martin for Congress Campaign Fund
Senate Contribution	5.00	2/56	Cross Campaign Committee
Contribution 3rd Cong. Dist.	5.00	10/11	
Contribution 4th Cong. Dist.	5.00	2/56	McFall 11th District Committee
Contribution 9th Cong. Dist.	5.00	3/56	P. Weightman
Contribution 11th Cong. Dist.	5.00	4/56	North Carolina State CIO-PAC
Contribution 12th Cong. Dist.	5.00	5/56	Hays Congressional Campaign Fund
Contribution 18th Cong. Dist.	5.00	5/56	Carter Congressional Campaign Committee
Contribution 21st Cong. Dist.	5.00	5/56	Mahoney for Congress Committee
		5/56	Reuss for Congress Committee

Purpose
Contribution 25th Cong. Dist.
Contribution 1st Cong. Dist.
Contribution 2nd Cong. Dist.
Contribution
Contribution 1st Cong. Dist.
Contribution 2nd Cong. Dist.
Contribution 3rd Cong. Dist.
Contribution 5th Cong. Dist.
Contribution 7th Cong. Dist.
Contribution 11th Cong. Dist.
Campaign Expenses
Contribution
Contribution 18th Cong. Dist.
Contribution 4th Cong. Dist.
Contribution 1st Cong. Dist.
Contribution 5th Cong. Dist.

<i>Date</i>	<i>Name of Payee</i>	<i>Purpose</i>	<i>Amount</i>
10/5/56	Johnson for Congress Club	Contribution 9th Cong. Dist.	1.00
10/5/56	Idaho Labor's League for Political Education	Contribution	2.50
10/5/56	Idaho PAC	Contribution	2.50
10/5/56	Macdonald for Congress	Contribution 8th Cong. Dist.	5.00
10/5/56	J. Holtz for Congress Committee	Contribution 10th Cong. Dist.	5.00
10/8/56	O'Hara for Congress Campaign Fund	Contribution 2nd Cong. Dist.	5.00
10/9/56	E. R. Williamson	Office Expense	0.00
10/10/56	Los Angeles Joint Board ACWA	Contribution	2.00
[fol. 1012]			
10/10/56	Maier for U. S. Senate	Contribution	2.50
10/10/56	Weatherby Senate Campaign Fund	Contribution	2.50
10/10/56	Clements for Senate Committee	Contribution	2.50
10/10/56	Richards for U. S. Senator Fund	Contribution	5.00
10/10/56	Flynn for Congress Committee	Contribution 1st Cong. Dist.	1.00
10/10/56	Kastenmeier Campaign Fund	Contribution 2nd Cong. Dist.	1.00
10/10/56	Wilson for Congress Committee	Contribution 1st Cong. Dist.	1.00
10/10/56	Patterson Congressional Campaign	Contribution 2nd Cong. Dist.	1.00

<i>Amount</i>	<i>Date</i>	<i>Name of Payee</i>	<i>Purpose</i>	<i>Amount</i>
1.00	10/56	Christopher for Congress Committee	Contribution 4th Cong. Dist.	1,000.00
2.50	10/56	Hull Congressional Campaign Fund	Contribution 6th Cong. Dist.	1,000.00
2.50	10/56	Moulder for Congress Club	Contribution 11th Cong. Dist.	1,000.00
5.00	10/56	Rogers for Congressional Fund	Contribution 1st Cong. Dist.	1,000.00
5.00	10/56	Utah State AFL-CIO COPE	Contribution	2,500.00
2.50	2/56	New Jersey State CIO-PAC	Contribution	500.00
5.00	2/56	Dallas AFL-CIO Council	Contribution	500.00
2.50	2/56	Michigan State PAC	Contribution	1,000.00
2.50	2/56	Wickard for Senate Committee	Contribution	2,500.00
2.50	1013]			
2.50	2/56	Cincinnati Council PAC	Contribution	\$500.00
2.50	2/56	United Labor Committee for Williams	Contribution 6th Cong. Dist.	1,000.00
2.50	2/56	Thompson for Congress Committee	Contribution 4th Cong. Dist.	500.00
5.00	2/56	Carvey Congressional Campaign Fund	Contribution 11th Cong. Dist.	500.00
1.00	2/56	Illinois State CIO-PAC	Contribution	500.00
1.00	2/56	New York Laundry Workers Joint Board—ACWA	Contribution	1,000.00
1.00	2/56	Cleveland IUC	Contribution	1,000.00
1.00	2/56	Daniel Powell	Salary	173.00
1.00	2/56	Thomas A. Probey	Salary	79.15
1.00	2/56	Ernest R. Williamson	Salary	173.00
5.00	5/56	New Jersey Labors League for Political Education	Contribution	2,500.00

<i>Date</i>	<i>Name of Payee</i>	<i>Purpose</i>
10/15/56	New Jersey State PAC	Contribution
10/15/56	Textile Workers Union of America Political Education Fund	Contribution
10/15/56	Textile Workers Union of America Political Education Fund	Contribution
10/15/56	Colorado State COPE	Contribution
10/17/56	Bible for Senate Campaign Fund	Contribution
10/19/56	Lowery for Congress Committee	Contribution 35th Cong. Dist.
[fol. 1014]		
10/19/56	Maryland-District of Columbia COPE	Contribution
10/19/56	Stevenson-Kefauver Campaign Dinner Committee	Contribution
10/19/56	Textile Workers Union of America Political Education Fund	Contribution
10/23/56	Rosen for Congress Club	Contribution 14th Cong. Dist.
10/23/56	Stengel for Senator Campaign Fund	Contribution
10/23/56	Forand for Congress Committee	Contribution 1st Cong. Dist.
10/23/56	Brock for Congress Committee	Contribution 3rd Cong. Dist.
10/23/56	Hubert Smith for Congress Club	Contribution 15th Cong. Dist.
10/23/56	Campaign Committee for Donald L. O'Toole	Contribution 12th Cong. Dist.

Amount	Date	Name of Payee	Purpose	Amount
2.50	3/56	Lindsey for Congress Committee	Contribution 12th Cong. Dist.	500.00
5.30	3/56	Rhodes for Congress Committee	Contribution 14th Cong. Dist.	500.00
	3/56	Mahoney for Senate Campaign Fund	Contribution	2,500.00
50	3/56	National Non-Partisan Issues Committee	Contribution	1,500.00
10	3/56	King for Congress Club	Contribution 6th Cong. Dist.	500.00
50		1015]		
Dist. 2	3/56	John Carroll Senate Campaign Committee	Contribution	\$2,500.00
\$2.00	3/56	Dodd for Senate Campaign Fund	Contribution	1,000.00
10	3/56	District of Columbia IUC	Contribution	500.00
	3/56	Quenstedt Congressional Campaign Fund	Contribution 10th Cong. Dist.	500.00
	3/56	Dodd for Senate Campaign Fund	Contribution	500.00
Dist. 3	3/56	Wagner for Senate Campaign Fund	Contribution	5,000.00
n 25	3/56	Carvey Congressional Campaign Fund	Contribution 11th Cong. Dist.	500.00
n Dist. 3	3/56	Los Angeles Joint Board ACWA	Contribution	300.00
n Dist. 3	3/56	Cleveland Industrial Union Council	Contribution	1,000.00
n Dist. 3	3/56	Laundry Workers Joint Board—ACWA	Contribution	1,000.00
n Dist. 1	3/56	Illinois State PAC	Contribution	800.00

<i>Date</i>	<i>Name of Payee</i>	<i>Purpose</i>
10/23/56	Dallas AFL-CIO Council	Contribution
10/23/56	New Jersey State PAC	Contribution
10/24/56	Evans for Senate Campaign Fund	Contribution
10/26/56	Robbie for Congress Committee	Contribution 5th Cong. D
10/26/56	Moreland for Congress Committee	Contribution 1st Cong. D
[fol. 1016]		
10/26/56	Mahoney for Senate Campaign Fund	Contribution
10/26/56	Dodd for Senate Campaign Fund	Contribution
10/26/56	Stock for Congress Committee	Contribution 4th Cong. D
10/26/56	Save Our Resources Committee	Contribution
10/29/56	California Labors' League for Political Education	Contribution
10/29/56	Delaney for Congress Committee	Contribution 5th Cong. D
10/29/56	McCutcheon Congressional Campaign Committee	Contribution 6th Cong. D
10/29/56	Garmatz for Congress Headquarters	Contribution 3rd Cong. D
10/29/56	William Collins	Contribution Wagner din tickets Con- tribution
10/29/56	Stevenson-Kefauver Southern California Campaign Committee	Contribution
10/29/56	Johnson for Congressional Fund	Contribution 2nd Cong. D

	Amount	Date	Name of Payee	Purpose	Amount
tion	50	9/56	Quentin Burdick Cam- paign Fund	Contribution	375.00
tion	50	9/56	John Carroll Senate Campaign Committee	Contribution	1,000.00
tion	250	1017]			
tion		9/56	Re-elect Morse Committee	Contribution	\$2,000.00
. Dist.	50	9/56	Richards for Senate Campaign Fund	Contribution	1,000.00
tion	50	10/56	Volunteers for Stevenson- Kefauver	Contribution	5,000.00
tion	\$250	10/56	Stevenson-Kefauver Campaign Committee	Contribution	5,000.00
tion	250	10/56	Stevenson-Kefauver Club	Contribution	5,000.00
tion		10/56	Volunteers for Stevenson- Kefauver	Contribution	5,000.00
g. Dist.	100	10/56	Volunteers for Stevenson- Kefauver	Contribution	3,000.00
tion	500	10/56	Volunteers for Stevenson- Kefauver	Contribution	5,000.00
tion	250	10/56	Volunteers for Stevenson- Kefauver	Contribution	5,000.00
tion		10/56	Volunteers for Stevenson- Kefauver	Contribution	5,000.00
g. Dist.		10/56	Volunteers for Stevenson- Kefauver	Contribution	500.00
tion		10/56	New Jersey State PAC	Contribution	67.50
g. Dist.		10/56	Maryland-District of Colum- bia Federation of Labor	Contribution	750.00
tion		10/56	McDowell for Congress Committee	Contribution Cong. at large	500.00
dinner		10/56	Ullman for Congress Committee	Contribution 2nd Cong. Dist.	
Con-					
n					
tion					
tion					
g. Dist.					

[fol. 1018]

<i>Date</i>	<i>Name of Payee</i>	<i>Purpose</i>
10/30/56	LeRoy Anderson Campaign Committee	Contribution 2nd Cong. I
10/30/56	Los Angeles Joint Board ACWA	Contribution
10/31/56	Metropolitan Baltimore PAC	Contribution
10/31/56	Maryland IUC-PAC	Contribution
10/31/56	Oklahoma State Labor's League for Political Education	Contribution
10/31/56	AFL-CIO	Travel Expense
10/31/56	Johnson for Senate Committee	Senate Contribution
10/31/56	Weatherby Senate Campaign Fund	Senate Contribution
10/31/56	California State PAC	Contribution
10/31/56	California State Labor's League for Political Education	Contribution
11/2/56	George Mahoney Campaign Committee	Contribution
11/2/56	Salem for Congress Committee	8th Cong. I Iowa
11/2/56	Steel City Trade Union Council	Contribution
11/2/56	Weatherby Senate Campaign Fund	Contribution
[fol. 1019]		
11/2/56	West Virginia Volunteers for Stevenson	Contribution

		<i>Name of Payee</i>	<i>Purpose</i>	<i>Amount</i>
	56	Tennessee Volunteers for Stevenson	Contribution	5,000.00
	56	Virginia Volunteers for Stevenson	Contribution 10th Cong. Dist.	5,000.00
	56	Indiana State IUC	Contribution	200.00
	56	George Mahoney Cam- paign Committee	Contribution	2,500.00
	56	Wickard Senate Cam- paign Fund	Contribution	3,000.00
	56	William F. Schnitzler	Reimbursement for air travel— Andrew Biemiller	190.75
	56	National Non-Partisan Issues Committee	Contribution	2,000.00
	56	Allegheny County Democratic Committee c/o Elmer Holland 1301 Commonwealth Bldg. Pittsburgh 22, Pennsylvania	Campaign for Elmer Holland	500.00

The Machinists Non-Partisan Political League (MNPL) expended the amounts of money hereinafter listed on the dates shown to the party listed, and in the amounts specified, in each of the following instances:

		<i>Name of Payee</i>	<i>Amount</i>
	56	Mahoney for Senate Committee	\$ 500.00
	56	National Non-Partisan Issues Committee	1,000.00
	56	Washington MNPL, Donald E. Schultz, Sec.	128.75
	56	Denman for Congress	\$ 250.00
	56	Salem for Congress Committee	250.00
	56	Kastenmeir for Congress Committee	250.00
	56	Mahoney for U. S. Senate Committee	1,000.00

<i>Date</i>	<i>Name of Payee</i>
10/24/56	Wade for Congress Committee
10/25/56	COPE
10/25/56	Stevenson-Kefauver Campaign Comm
10/25/56	Volunteers for Stevenson-Kefauver
10/25/56	Democratic State Committee of Arkan
10/25/56	Democratic State Committee of Mass
10/25/56	Arizona Get-Out-To-Vote Committee
10/26/56	District-Virginia MNPL
10/31/56	Mahoney for Senate Committee
10/31/56	Stengel for Senate Committee
10/31/56	Wickard for Senate Committee
9/20/56	Roosevelt for Congress Committee, 'Ca
9/20/56	Kentucky MNPL
9/20/56	H. O. Staffers for Congress, West Vir
9/20/56	Cleveland Bailey for Congress, West
9/20/56	M. G. Burnside for Congress, West Vi
9/20/56	Citizens for Clements Committee, Kent
9/20/56	Citizens for Wetherby Committee, Ke
9/20/56	Lankford Campaign Committee, Mary
9/21/56	Democratic National Cominittee
9/25/56	National Non-Partisan Issues Committ
9/26/56	Re-elect Zablocki for Congress Club,
[fol. 1021]	
9/26/56	Independent Citizens for Reuss, Wise
9/26/56	Bible for Senate Club, Nevada
9/26/56	Baring for Congress at Large Club, N

Amount	Date	Name of Payee
300	6/56	Phillip Ardery for Congress, Kentucky
1,000	6/56	Belling Campaign Committee, Missouri
5,000	6/56	Citizens for Frank Church for Senate, Nevada
5,000	6/56	Thurman C. Crook Campaign Committee, Indiana
5,000	6/56	M. G. Burnside for Congress, West Virginia
5,000	9/56	Educ Fund MNPL (Transfer)
2,000	9/56	L. K. Sullivan for Congress, Missouri
2,000	9/56	H. O. Staffers for Congress, West Virginia
1,000	11/56	Florida Committee—Stevenson for President
2,000	11/56	Rudolph Ploetz for Congress, Wisconsin
6,000	11/56	Lester Johnson for Congress, Wisconsin
2,000	11/56	William P. Mahoney for Congress, Arizona
2,000	11/56	Stewart Udall for Congress, Arizona
2,000	11/56	Al Ullman for Congress, Oregon
1,000	11/56	Claude Wickard for Senate, Indiana
2,000	11/56	Alva Adams for Congress, Colorado
1,500	11/56	Kentucky Get-Out-Vote Committee
1,500	11/56	Mahoney for U. S. Senate Committee, Maryland
1,500	11/56	Samuel Clark for Congress, Michigan
5,000	11/56	Oregon MNPL
1,000	11/56	Dodd for Senate Committee, Connecticut
1,000	11/56	Ward for Congress Committee, Connecticut
1,000	11/56	Garmo for Congress Committee, Connecticut
1,000	10/22]	
1,000	11/56	Tolbert Macdonald for Congress Committee, Massachusetts
1,000	11/56	Jackson Haltz for Congress, Massachusetts

<i>Date</i>	<i>Name of Payee</i>
10/2/56	Rhodes for Congress, Pennsylvania
10/4/56	Foley for Congress Committee,
10/5/56	John Carroll for Senate Committee
10/5/56	Reynolds for Congress, Idaho
10/5/56	Pfost for Congress Committee, I
10/5/56	Moreland for Congress Committee
10/9/56	Blatnik for Congress, Minnesota
10/9/56	Frederickson for Congress, Minn
10/9/56	Quinney for Congress, California
10/9/56	WSAZ-TV Station, Huntington, W Mallahan, Kentucky
10/9/56	Indiana Get-Out-The-Vote Comm
10/9/56	John W. King, Indiana
10/9/56	Garvey for Congress, Indiana
10/9/56	Clark for Senate Committee, Per
10/9/56	Clark for Congress Committee,
10/9/56	Fullum for Congress Committee,
10/9/56	Quigley for Congress Committee,
10/9/56	Flood for Congress, Pennsylvania
10/9/56	McClinchey for Congress, Pennsy
10/9/56	Rooney for Congress, New York
10/9/56	Holtzman for Congress, New Yor
10/9/56	Akers for Congress, New York
10/9/56	Delaney for Congress, New York
[fol. 1023]	
10/9/56	Sieminski for Congress, New Jer
10/9/56	Marland for U. S. Senate, West

	Amount	Date	Name of Payee
vania	30	1/56	Citizens for Quenstedt, Virginia
e, Maryland	30	1/56	Wagner for Senator, New York
nittee, Colorado	12	1/56	George S. McGovern for Congress, South Dakota
	2	1/56	Mahoney for U. S. Senator, Maryland
e, Idaho	2	1/56	Casey for Congress Committee, Pennsylvania
nittee, Oklahoma	2	1/56	National Non-Partisan Issues Committee
ota	2	1/56	Stevenson-Kefauver Campaign Committee
innnesota	2	1/56	Charles Brown for Congress, Missouri
rnia	2	1/56	Byron Rogers for Congress, Colorado
n, West Virginia,		1/56	Johnson for Congress, Colorado
		1/56	Carter for Congress, Iowa
mmittee		1/56	Carter for Congress, Iowa
		1/56	Gronning for Congress, Utah
		1/56	McConkie for Congress, Utah
Pennsylvania	12	1/56	Hopkin for Congress, Utah
ee, Pennsylvania		1/56	S. Saund for Congress, California
tee, Pennsylvania		2/56	Linda A. Matteo & Associates, Wickard Campa
tee, Pennsylvania			Indiana
vania		2/56	National Non-Partisan Issues Committee
nnsylvania		7/56	Milwaukee, Maier for U. S. Senate Committee
ork		7/56	Citizens for Sullivan Committee, Missouri
York		7/56	Gerald T. Flynn, Wisconsin
ork		7/56	Stevenson-Kefauver, California Committee
ork		1024]	
		7/56	Keneth J. Gray for Congress, Illinois
Jersey		7/56	Albert R. Imle, Illinois
West Virginia	1	7/56	Albert L. Smith, California

<i>Date</i>	<i>Name of Payee</i>
10/18/56	Benesch for Congress Committee
10/18/56	IAM—expenses
10/18/56	Arnold Olson for Governor of M
10/18/56	Freeman for Governor of Minn
10/18/56	Kansas State Legislative Comm
10/18/56	Griffin for State Senate Commit
10/18/56	National Rural Electric Associat
6/12/56	Warren Magnusen—Senate, Wa
6/22/56	Eugene McCarthy—Congress, M
7/11/56	Toby, Morris—Congress, Oklaho
7/12/56	Richard Richards—Senate, Cali
7/12/56	LeRoy Anderson—Congress, Mo
7/12/56	Al Ullman—Congress, Oregon
7/17/56	Leslie Biffle, Treasurer
7/18/56	Wickard for Senator Club, India
7/25/56	Wayne Morse Recognition Dinn
7/25/56	COPE
8/3/56	Rodino for Congress, New Jerse
8/6/56	Harrison Williams—Congress, M
8/7/56	Cleveland M. Bailey—Congress,
[fol. 1025]	
8/8/56	William F. Denman—Congress,
8/8/56	Don Magnusen—Congress, Was
8/9/56	J. L. McBrien
8/14/56	Stengel for Senator Committee
8/30/56	Clark for Senate Committee—P
8/30/56	Robert W. Weir—Congress, Min

Name of Payee

Committee, Nebraska

of Montana

Minnesota

Committee

Committee, Connecticut

Association—Pamphlets

Washington, D. C.

s, Minnesota

Oklahoma

California

Montana

n

Indiana

Winner,

Jersey

s, New Jersey

ss, West Virginia

ss, Iowa

Washington

tee—Illinois

—Pennsylvania

Minnesota

56 John E. Fogarty Campaign Committee, Rhode Island

56 Brademus for Congress Committee, Indiana

56 Coxa Knutson Congress, Minnesota

56 Joseph Robbie for Congress, Minnesota

56 Wayne Morse Political Committee

56 John T. O'Brien—Retainer

56 IAM—Expenses

56 Linda Matteo & Associates—Office Services

56 Kansas Anti-Right-to-Work Commission

56 J. T. O'Brien—Expenses

56 W. Lewis Wallace Campaign Committee

56 Staggers for Congress Committee, West Virginia

56 William Facht, Treasurer (George Rhodes, Pennsylvania) (for Congress)

56 Glen for Congress Committee—3 district Oregon

56 John Reneissen & A. C. Rouse, Kentucky

56 Committee to Re-elect Senator Wayne Morse, Oregon

56 Linda Matteo & Associates—Office Services, Washington, D. C.

26]

56 Don Reed & W. E. Boswell, Finance Chairmen
John Watts, 6th District, Kentucky

56 Volunteer Committee for Perkins, Kentucky

56 Kentucky Get-Out-The-Vote Committee

56 J. T. O'Brien—Coordinator—Retainer

56 IAM—Expenses

<i>Date</i>	<i>Name of Payee</i>	<i>Amount</i>
5/18/56	J. T. O'Brien—Expenses	438
5/18/56	Mollahan for Governor Committee, West Virginia	1,000
Jan. 57	Newark MNPL	25
Jan. 57	Alabama MNPL	38
Jan. 57	Washington, D. C. Chapter ADA, Dinner	100
Feb. 57	National Planning Conference, Washington, D. C.	1,141

The period from June 1 through
August 31, 1957:

Perpetual Building Association	7,500
National Permanent Savings & Loan Association	7,500
William Proxmire for Senate Committee	1,000
Zablocki for Senate Committee	150

The period from September 1 through
December 31, 1957:

Education Fund, MNPL, Transfer of Funds	6,052
Meyner for Governor Committee	500
Cook for Congress Committee	500

[fol. 1027]

(c) The Railway Labors' Political League (RLPL) expended amounts of money hereinafter listed on the dates shown, and to party listed, and in the amounts specified, in each of the following instances:

<i>Date</i>	<i>Name of Payee</i>	<i>Purpose</i>	<i>Amount</i>
1/22/57	Morse Deficit Committee		\$2,000
2/28/57	Robert Bryant	Contribution for general activity	2,000
3/18/57	Jack Beatty, Treasurer	Contribution for general activity	750

Date	Name of Payee	Purpose	Amount
14/57	Robert Bryant	Contribution for general activity	2,000.00
20/57	Proxmire for U. S. Senate Committee	Contribution for general activity	1,000.00
29/56	Moreland Campaign Fund		500.00
30/56	George E. McMahon	Contribution for general expenses while campaigning in Virginia	187.37
30/56	Mahoney Campaign		2,000.00
30/56	Dodd for Senate Committee		2,000.00
30/56	William E. Doyle	Contribution for general activity	2,000.00
Oct. 1928]			
10/30/56	Evans Campaign Committee		\$1,000.00
10/31/56	Transfer of Funds to Railway Labors' Political League Education Fund		3,628.12
11/31/56	Harley O. Staggers	Contribution for general activity	1,000.00
12/17/56	Robert Michel	Contribution for general activity	300.00
1/27/56	Staggers for Congress Committee		1,000.00
4/9/56	Magnuson Campaign Committee		2,000.00
5/10/56	Smathers Campaign Committee		350.00
6/17/56	Democratic National Committee		5,000.00
7/17/56	Woodrow Wilson Dinner Committee		2,000.00

<i>Date</i>	<i>Name of Payee</i>	<i>Purpose</i>
4/25/56	James C. Murray Campaign Committee	
4/25/56	Barratt O'Hara	Contribution for general activity
4/25/56	Citizens Committee for P. F. Mack	
[fol. 1029]		
5/14/56	Kentucky Campaign K. Birkhead	
5/25/56	COPE	Contribution for general activity
6/11/56	California Railway Labors Citizens League	
6/12/56	W. J. Burton	Contribution for general activity
7/2/56	Gene Wyatt	Contribution for General activity in 6th Cong. Dist.
7/2/56	Leonor Sullivan	Contribution for general activity
7/2/56	E. L. Skipper	Expenses
7/2/56	John B. Bennett	Contribution for general activity
7/2/56	Hayworth Campaign for Congress	
7/5/56	Charles Hurley	Contribution for general activity
[fol. 1030]		
7/5/56	Joseph Craken	Contribution for general activity
7/5/56	John W. Beemer	Contribution for general activity

Amount	Date	Name of Payee	Purpose	Amount
500.	7/5/56	Frank M. Clark	Contribution for general activity	500.00
500.	7/10/56	Union County Democratic Committee		500.00
500.	7/10/56	John B. Bennett	Contribution for general activity	500.00
	7/10/56	Re-elect Senator Morse Committee		1,000.00
\$1,000.	7/13/56	Leslie Biddle, Treas. Democratic Senatorial Campaign Committee		2,000.00
500.	7/16/56	Democratic Senatorial Campaign Committee		2,000.00
325.	7/24/56	9th Dist. Johnson for Congress Club		500.00
	7/30/56	Gene Wyatt	Contribution for general activity	500.00
500.	8/21/56	Don Magnuson Finance Committee		500.00
500.	8/21/56	Burnside for Congress Committee		\$ 500.00
500.	8/24/56	William Morse Campaign Committee		5,000.00
500.	9/5/56	Stengel for Senate Committee		5,000.00
1,000.	9/5/56	Foley for Congress Committee		500.00
\$ 500.	10/13/56	Alonzo Young for Maine Campaign		500.00
500.	10/13/56	Joseph Craken—Macdonald for Congress Committee		500.00

<i>Date</i>	<i>Name of Payee</i>	<i>Purpose</i>
9/13/56	Frank M. Karsten	Contribution general activi
9/18/56	Cleveland M. Bailey	Contribution general activi
9/21/56	Dodd for Senate Committee	
9/21/56	Pfost Campaign Committee	Contribution general activi
9/21/56	H. S. Reuss	
9/21/56	Hull for Congress Club	
[fol. 1032]		
9/21/56	Winfield K. Denton	Contribution general activi
9/21/56	Christopher for Congress Club	Contribution general activi
9/21/56	C. E. St. Amour	
9/21/56	McCarthy for Congress Volunteer Committee	
9/24/56	Weber County Democratic Central Committee	
9/25/56	Oregon Democratic Central Committee	
9/25/56	Morse Campaign Committee	
9/25/56	William E. Doyle	
9/25/56	Mess for Congress Campaign Committee	
9/25/56	Robert J. Harris	
9/25/56	John A. Blatuik	
9/26/56	Citizens for Frank Church	
9/27/56	Roy W. Wier	

	Amount	Name of Payee	Purpose	Amount
on for activity	500	10/3/56 Imle for Congress Campaign Committee		500.00
on for activity	500	10/4/56 John B. Bennett	Contribution for general activity	500.00
	1.1033]			
	2,000	10/4/56 Martha Griffith's Campaign Committee		\$ 500.00
on for activity	500	10/9/56 Spillers Campaign Committee		500.00
	500			
	500	10/9/56 Whitehead for Congress Committee		500.00
on for activity	\$ 500	10/9/56 LeRoy Anderson for Congress Committee		500.00
on for activity	500	10/9/56 Union County Democratic Committee		500.00
	500	10/9/56 Roger Fox		500.00
	500	10/9/56 Moulder for Congress Club		500.00
	500	10/9/56 Peter W. Rodino		500.00
	500	10/9/56 Burnside for Congress Committee		500.00
	2,000	10/9/56 L. D. Slutz Campaign Fund		500.00
	1,000	10/9/56 J. T. Dewan Campaign Fund		500.00
	1,000	10/9/56 Clyde E. Milligan, Treas., 2nd Cong. Dist. of Kansas	Contribution for general activity	200.00
	500	10/9/56 Agnes Geelan	Contribution for general activity	500.00
	500	10/9/56 California Railway Labors Citizens' League		500.00
	500	1.1034]		
	1,000	10/9/56 New Jersey State Democratic Committee		\$ 500.00
	500			

<i>Date</i>	<i>Name of Payee</i>	<i>Purpose</i>
10/9/56	Harry Lerner	Contribution general activ
10/10/56	Magnuson Campaign Committee	
10/10/56	Pat Jennings Campaign Committee	
10/15/56	Stengel for Senate Committee	
10/16/56	Betty Hill	Contribution general activ 28th Dist.
10/17/56	Frank M. Karsten	Contribution general activ
10/17/56	Hayworth Campaign for Congress	
10/17/56	Friedel for Congress	
10/18/56	Stevenson-Kefauver Dinner Committee	
10/18/56	Jackson J. Holtz Congress Campaign Committee	
[fol. 1035]		
10/18/56	George G. McMahon	Campaign expenses Virginia
10/23/56	Rhodes for Congress Committee	
11/1/56	William Powers	
11/1/56	Holz Congress Committee	
11/1/56	Citizens Committee for P. F. Mack	
11/1/56	Imle for Congress Committee	

	Amount	Date	Name of Payee	Purpose	Amount
ion for ctivity	50	11/1/56	J. K. Dear, Dem. Chmn., 2nd Dist.		200
	2.00	11/2/56	Campaign Committee for Robert Geaino		500
	50	11/2/56	Campaign Committee for H. P. McDowell		500
	1.00	11/2/56	Campaign Committee for William F. Denman		500
ion for ctivity	50	11/2/56	Campaign Committee for John W. King		500
ion for ctivity	50	11/2/56	Campaign Committee for Hamilton Fox		500
	50	11/2/56	Campaign Committee for George G. Lindsay		500
	50	11/2/56	Campaign Co mmittee for James G. Polk		500
	9.00	11/2/56	Campaign Committee for Thomas L. Ashley		\$ 500
	50	11/2/56	Campaign Committee for Al Ullman		500
	\$ 15	11/2/56	Campaign Committee for William P. Mahoney		500
	50	11/2/56	Campaign Committee for Cecil R. King		500
	1.50	11/2/56	Campaign Committee for Chet Halifield		500
	50	11/2/56	Campaign Committee for Clyde Doyle		500
	50	11/2/56	Campaign Committee for James Roosevelt		500
	25	11/14/56	George E. McMahon		359

<i>Date</i>	<i>Name of Payee</i>
11/21/56	Melvin Price
11/21/56	King County Democratic Central Committee

This 17th day of March, 1958.

GAMBRELL, HARLAN, RUSSELL, M

E. Smythe Gambrell
Charles A. Moye, Jr.
Terry P. McKenna

825 Citizens & Southern
Nat'l Bank Building
Atlanta 3, Georgia

JA. 2-5951

[fol. 1037]

PLAINTIFFS' EXHIBIT NO.

IN THE SUPERIOR COURT OF BIBB C

Case No. 16,537

NANCY M. LOOPER, et

v.

GEORGIA SOUTHERN & FLORIDA RAILWA

ANSWER TO "PLAINTIFFS' FIRST REQUEST

Come now the union defendants, and
and for answer to the document desig-
First Request for Admissions", consisting

1. The Request asks Milton Kran-
Mincey, attorneys for the union defend

Purpose

Am

500

2,000

MOYE & RICHARDSON

No. 488

B COUNTY, GEORGIA

7

et al.,

WAY COMPANY, et al.

REQUEST FOR ADMISSIONS"

, and their attorneys,
designated "Plaintiffs"
isting of 29 pages, say:
ramer and David L.
endants, to admit that

the statements on the 29 pages are true. T
knowledge of the truth of those statements.

2. Treating the Request as addressed to t
fendants, they also have no knowledge of t
those statements, since they pertain to activi
penditures of organizations other than the
which organizations are not represented by t
for the union defendants.

3. However, without admitting the relevan
the items in the Request for Admissions to
issues in this case, or the admissibility as evic
of said items, but expressly denying said re
admissibility, defendants state that they have
been informed, and therefore admit:

[fol. 1038] (a) That the statements on page
17 [para. (2)] reflect expenditures made by th
on Political Education, AFL-CIO, as shown
filed by that organization with the Clerk of t
Representatives of the United States, with t
exceptions which they therefore deny:

(1) The Committee on Political Educ
CIO, did not on October 26, 1956, make a
of \$2,500.00 to Dodd for Senate Campaign
ever, it did on such date make such a con
the amount of \$1,500.00. (Page 15 of Reque

(2) That organization did not on Jan
make a contribution of \$500.00 to Alleg
Democratic Committee for the Campaign
Holland. (Page 17 of Request)

(b) That the statements on pages 18 throu
[b)] are substantially accurate, as reflected in
by the Machinists Non Partisan Political Lea
Clerk of the House of Representatives of the U
but reflect items contained in several differ
related such reports, which items are dovet
statements on pages 18 through 23.

(c) That the statements on pages 24
(c)] reflect expenditures made by Rail
ical League, as shown by reports filed
with the Clerk of the House of Rep
United States.

M. Kramer
Milton Kramer
1625 K Street
Washington
Attorney for

[fol. 1039]

PLAINTIFFS' EXHIBIT NO.

IN THE SUPERIOR COURT OF BIBB C

Case No. 16,537

NANCY M. LOOPER, et

vs.

GEORGIA SOUTHERN & FLORIDA RAILWA

PLAINTIFFS' SUBSTITUTED SECOND REQU

To: Mr. Milton Kramer	Mr. David
Schoene & Kramer	321 Cotton
1625 K Street, N. W.	Macon, Ge
Washington 6, D. C.	

Attorneys for the Labor Union

Please take notice that the plaintiff
their "Second Request for Admissions
May 8, 1958, to which the Labor Union
not yet responded, and, in lieu thereof
union defendants, to wit, International
Boilermakers, Iron Ship Builders, B
and Helpers; Brotherhood of Railway C

s 24 through 29 [para.
Railway Labor's Polit-
ed by that organization
Representatives of the

r
amer
reet, N. W.
on 6, D. C.

for Union Defendants.

No: 489

B COUNTY, GEORGIA

37

et al.,

Plaintiffs,

LOWAY COMPANY, et al.,

Defendants.

REQUEST FOR ADMISSIONS

David L. Mincey
otton Avenue
, Georgia

Union Defendants.

ntiffs hereby withdraw
ions" served herein on
Union Defendants have
ereof request the labor
tional Brotherhood of
Blacksmiths, Forgers
ay Carmen of America;

Brotherhood of Railway and Steamship Cl
Handlers, Express and Station Employees;
Brotherhood of Electrical Workers; Internati
hood of Firemen and Oilers, Helpers, Round
way Shop Laborers; International Associ
chinists; Brotherhood of Maintenance of Wa
National Marine Engineers' Beneficial Ass
ternational Organization of Masters, Mater
[fol. 1040] Sheet Metal Workers Internati
tion; Brotherhood of Railroad Signalmen of
der of Railroad Telegraphers; American Train
Association, and Railroad Yardmasters of
suant to the provisions of Section 81-1011 o
Georgia Annotated, to admit, within ten (1
service upon you of this request, for the p
above-entitled action only, and subject to all
jections to admissibility which may be inter
trial, that each and all, of the matters of fac
this request are true and correct:

1.

The constitution of the AFL-CIO provides
ment of a per capita tax of four cents per
month by each international union affiliated w
CIO.

2.

Commencing in July, 1956, the Executive
the AFL-CIO levied an assessment upon al
the AFL-CIO which in effect amounted to a
member per month addition to the constituti
per capita tax.

3.

The current per capita tax paid by all af
AFL-CIO is five cents per member per month.

4.

Per capita taxes were paid by the following
union defendants to the AFL-CIO for the p
in the amounts specified, as follows:

[fol. 1041]

Labor Union Defendant

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers	\$ 36
Brotherhood of Railway Carmen of America	37
Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees	65
International Brotherhood of Electrical Workers	129
International Brotherhood of Firemen and Oilers, Helpers, Roundhouse & Railway Shop Laborers	15
International Association of Machinists	160
Brotherhood of Maintenance of Way Employees	43
National Marine Engineers' Beneficial Association	2
International Organization of Masters, Mates and Pilots	2
Sheet Metal Workers International Association	14

[fol. 1042]

Brotherhood of Railroad Signalmen of America	4
Order of Railroad Telegraphers	8
American Train Dispatchers Association	
Railroad Yardmasters of America	1

Amount Paid

Dec. 5, 1955- July 1, 1956
June 30, 1956 June 30, 1957

36,180.00 \$ 81,405.00

37,390.28 77,299.58

65,214.36 153,237.46

129,189.60 272,090.40

15,799.68 32,599.18

160,380.04 452,214.32

43,077.96 95,915.82

2,880.00 4,720.00

2,896.00 5,430.00

14,000.00 32,000.00

4,209.04 8,561.93

8,400.00 18,000.00

— 1,000.00

1,120.00 2,400.00

5.

Each and all of the named labor union defendants in this action are presently affiliated with, and pay taxes of five cents (5¢) per member per month to the AFL-CIO.

6.

During the period from July 1, 1956 through June 30, 1957, the AFL-CIO collected \$8,663,355.43 as to the defendants in this action from per capita taxes and of that amount \$1,220,000.00 excess of 14 per cent, was collected from the defendants in this action.

7.

During the period from July 1, 1956, through June 30, 1957, the AFL-CIO made expenditures totaling \$1,220,000.00 in the operation of the AFL-CIO Committee on Political Education (COPE).

8.

During the period from December 5, 1955 through June 30, 1956, the AFL-CIO made expenditures totaling \$372,180.00 in the operation of the AFL-CIO Committee on Political Education (COPE).

[fol. 1043]

9.

During the period from December 5, 1955 through June 30, 1956, the AFL-CIO made expenditures of \$1,220,000.00 in the operation of the AFL-CIO Civil Rights Committee and that expenditures of \$69,618.79 were made by the AFL-CIO for the said Civil Rights Committee during the period from July 1, 1956 through June 30, 1957.

10.

During the period from December 5, 1955 through June 30, 1956, the AFL-CIO made expenditures of \$1,220,000.00 in legislative activities and expenditures of \$69,618.79 were made by the AFL-CIO for legislative activities during the period from July 1, 1956 through June 30, 1957.

11.

Contributions were made by the AFL-CIO to the organizations shown and in the amounts specified during the periods shown below:

Name	Amount Paid	
	Dec. 5, 1955- June 30, 1956	July 1, 1956- June 30, 1957
Association of Labor Health Administration		\$ 6,000.00
AFL-CIO International Free Labor Fund		25,000.00
Inter University Labor Education Committee		8,000.00
National Committee on Immigration and Citizenship, Inc.		2,000.00
[fol. 1044]		
National Hells Canyon Association		5,000.00
National Religion and Labor Foundation		2,000.00
Preservation of Free Public Schools	\$5,000.00	
Southern Regional Council, Inc.		5,000.00
United Givers Fund		2,500.00
United Nations' Refugee Fund	2,000.00	

12.

Contributions were made by the AFL-CIO from an AFL-CIO "International Free Labor Fund" to the organizations shown and in the amounts specified during the period from November 5, 1956 to June 30, 1957:

Name	Amount
International Confederation of Free Trade Unions—Free World Solidarity Fund	\$25,000.00
International Confederation of Free Trade Unions for Hungarian Relief	25,000.00
Austrian Trade Union Federation for Hungarian Relief	50,000.00
Tanganyika Federation of Labor	2,500.00

13.

Each of the labor union defendants in this action was represented at a meeting of the General Board of the AFL-CIO held on September 12, 1956 and registered no opposition to the resolution of the Executive Council, AFL-CIO as follows:

[fol. 1045] "That Adlai E. Stevenson and Estes Kefauver are hereby endorsed by the AFL-CIO for President and Vice-President, respectively, of the United States."

14.

The defendant George M. Harrison, both individually and as Grand President of the defendant Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, is a member of the *Executive Council* of the AFL-CIO; is Chairman of the AFL-CIO *Committee on Education*; is Chairman of the AFL-CIO *Committee on International Affairs*; and is a member of the AFL-CIO *Civil Rights Committee*, *Committee on Economic Policy*, *Legislative Committee*, *Public Relations Committee*, and *Committee on Political Education (COPE)*.

15.

Joseph Keenan, both individually and as Grand President of the International Brotherhood of Electrical Workers, is a member of the *Executive Council* of the AFL-CIO; and is a member of the AFL-CIO *Civil Rights Committee*, *Committee on Economic Policy*, *Committee on Education*, *Committee on International Affairs*, *Legislative Committee*, and *Committee on Political Education (COPE)*.

16.

A. J. Hayes, both individually and as President of the International Association of Machinists, is a member of the *Executive Council* of the AFL-CIO; and is a member of the AFL-CIO *Civil Rights Committee*, *Committee on Economic Policy*, *Legislative Committee* and *Committee on Political Education (COPE)*.

[Dated August 12, 1958 and Signed by Plaintiffs' Attorneys.]

[fol. 1046]

PLAINTIFFS' EXHIBIT No. 490

IN THE SUPERIOR COURT OF BIBB COUNTY, GEORGIA

Case No. 16,537

NANCY M. LOOPER, et al.,

VS.

GEORGIA SOUTHERN & FLORIDA RAILWAY COMPANY, et

ANSWER TO "PLAINTIFFS' SUBSTITUTED SECOND REQUEST
FOR ADMISSIONS"

Come now the defendants named in the opening paragraph of Plaintiffs' Substituted Second Request for admissions and for answer thereto say:

1. They deny the statement in Paragraph 1 but admit that the statement was true prior to the last convention of the AFL-CIO.

2. They admit the statement in Paragraph 2 except that the assessment was determined by the Executive Committee of the AFL-CIO, not by the Executive Committee of the organization, and (b) that assessment has not been levied since the last convention of the AFL-CIO.

3. They admit Paragraph 3.

4. They admit Paragraph 4.

5. They admit Paragraph 5.

6. They admit Paragraph 6 except:

(a) The figure of \$8,663,355.43 includes not only per capita taxes but also assessments levied;

(b) The figure of \$1,226,870 is erroneous, and the correct figure is \$1,236,873.69; and

[fol. 1047] (c) The corrected figure of \$1,236,873.69 includes the per capita taxes and assessments paid by defendant unions for their entire membership, not just their membership employed on railroads, and that mo

the membership with respect to whom such amount was paid were not railroad employees.

7-12. They admit Paragraphs 7 through 12.

13. They admit Paragraph 13 except:

(a) International Association of Machines, Brotherhood of Maintenance of Way Employes, National Marine Engineers Beneficial Association, International Organization Masters, Mates and Pilots, Brotherhood of Railway Signalmen of America, and American Train Dispatchers Association were not represented at that meeting; and

(b) There was and is no "register" or record of those who opposed the resolution.

14. They admit Paragraph 14 except:

(a) They deny that George M. Harrison is a member of the Council and Committees named individually and as Grand President of the defendant Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes; and

(b) They deny that he is Chairman of the AFL-CIO Committee on Education.

15. They admit Paragraph 15 except:

(a) They deny that Joseph Keenan is a member of the Council and Committees named individually and as Grand President of the International Brotherhood of Electrical Workers; and

(b) If the statement in Paragraph 15 of the Request states or implies that Joseph Keenan is Grand President of the International Brotherhood of Electrical Workers, [fol. 1048] they deny such statement.

16. They admit Paragraph 16 except that they deny that A. J. Hayes is a member of the Council and Committees named individually and as President of the International Association of Machinists.

M. Kramer
Milton Kramer
1625 K Street, N. W.
Washington 6, D. C.
Attorney for Union Defendants

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Office of the Clerk of the Supreme Court

JUL 30

JAMES R. BROWN

No. ~~258~~ 4

IN THE
Supreme Court of the United States
OCTOBER TERM, 1959

INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL.,
Appellants,

v.

S. B. STREET, et al., *Appellees.*

On Appeal from the Supreme Court of Georgia

JURISDICTIONAL STATEMENT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No.

INTERNATIONAL ASSOCIATION OF MACHINISTS; INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS AND ENGINEERS OF AMERICA; INTERNATIONAL BROTHERHOOD OF BLACKSMITHS, FORGERS, AND HELPERS; SHEET METAL WORKERS INTERNATIONAL ASSOCIATION; INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; BROTHERHOOD OF RAILWAY CARMEN OF AMERICA; INTERNATIONAL BROTHERHOOD OF FIREMEN, OILERS, ROUNDHOUSE AND RAILWAY SHOP LABORERS; BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, AND STATION EMPLOYEES; BROTHERHOOD OF MAINTENANCE EMPLOYEES; ORDER OF RAILROAD TELEGRAPHERS; BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA; NATIONAL ORGANIZATION OF RAILROAD MASTERS, MATES AND PILOTS; NATIONAL MARINE ENGINEERS BENEFICIAL ASSOCIATION; AMERICAN TRAIN DISPATCHERS ASSOCIATION; RAILROAD YARDMASTERS OF AMERICA; L. C. R. H. HUBBARD, NORMAN DUGGER, J. R. WESTBROOK, PELKOFER, T. B. STEADMAN, C. J. BRICE, C. D. BRUNN, ROBERTS, H. H. DENT, J. J. DUFFY, B. R. ACUFF, T. J. IRVIN BARNEY, W. W. DYKE, W. B. CHAPMAN, ANTHONY J. H. DESOTELL, LEWIS CRAIG, GEORGE M. HARRISON, G. J. D. AVERA, J. P. ALEXANDER, G. W. BALL, R. K. F. G. GARDNER, H. R. DUENSING, E. V. PEED, JESSIE E. C. MELTON, F. O. DASHER, B. T. HURST, JOHN M. W. L. BALL, WILLIAM O. HOLMES, O. H. BRAESE, R. M. FORD, T. W. GRIMMETT, M. G. SCHOCH, H. E. IVEY, T. AND CHARLES J. MACGOWAN, Appellants,

v.

S. B. STREET; HAZEL E. COBB; J. H. DAVIS; MRS. FRITSCHER; NANCY M. LOOPER; MRS. ELIZABETH F. GEORGIA SOUTHERN AND FLORIDA RAILWAY COMPANY; SOUTHERN RAILWAY COMPANY; CINCINNATI, NEW ORLEANS AND PACIFIC RAILWAY; ALABAMA GREAT SOUTHERN RAILWAY COMPANY; NEW ORLEANS AND NORTHEASTERN RAILROAD COMPANY; CAROLINA AND NORTHWESTERN RAILWAY COMPANY; NEW ORLEANS TERMINAL COMPANY; ST. JOHNS RIVER RAILWAY COMPANY; AND HARRIMAN AND NORTHEASTERN RAILWAY COMPANY, Appellees.

On Appeal from the Supreme Court

JURISDICTIONAL STATEMENT

Appellants appeal from a final judgment of the Supreme Court of Georgia entered affirming a judgment of the Superior Court, Georgia, permanently enjoined the enforcement of union-shop agreements between company defendant-appellees and union defendant-appellants; declaring unconstitutional the Railway Labor Act to the extent that it permits the enforcement of such agreements under a union-shop agreement and the diversion of a portion of such funds in legislative or other activities other than the negotiation of collective bargaining agreements; null and voiding the enforcement of said agreements and awarding plaintiffs damages in the amount of the dues and fees they had paid while the union-shop agreements was not in effect. Appellants submit this Statement to show that the Supreme Court of the United States has jurisdiction to hear this appeal and that a substantial question is presented.

OPINIONS BELOW

The opinion of the Supreme Court of Georgia in the first appeal, *sub nom. Looper v. C. & N. W. Ry. Co.*, is reported in 213 Ga. 279, 99 S.E. 2d 108, and is attached hereto as Appendix A. The opinion of the Supreme Court of Georgia on the second appeal is reported in 213 Ga. 281, 99 S.E. 2d 110.

of Georgia

EMENT

judgment of the
on May 8, 1959.
ior Court of Bibb
ning the perform-
between the railroad
the labor organiza-
ing section 2, Ele-
be unconstitutional
collection of funds
the expenditure of
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tiation and adminis-
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and void; declaring
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tion is presented.

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Court of Georgia on
v. G. S. & F. Ry. Co.
E. 2d 101; a copy is
The opinion of the
the second appeal is
E. 2d 796; a copy is

attached hereto as Appendix B. A copy of the
ings, Conclusions, Order, Judgment and De
the Superior Court of Bibb County, Georgia
was affirmed by the decision appealed from
reported and is attached hereto as Appendix

JURISDICTION

This action was brought in the Superior
Bibb County, Georgia, by certain employees
Southern Railway Company and one of its sub
to enjoin that company and its subsidiaries (in-
ing the Southern Railway System) and the
labor unions from performing union-shop agree-
entered into by the said railroad companies
said unions pursuant to Section 2, Eleventh
Railway Labor Act (Act of Jan. 10, 1951, c.
Stat. 1238, U.S.C. Tit. 45, sec. 152, Eleventh
among other items of relief, to declare said
Eleventh unconstitutional and ineffective to s
state law. The plaintiffs purported to sue t
selves and all others allegedly similarly situa
judgment of the Supreme Court of Georgia wa
May 8, 1959 and Notice of Appeal was filed
Court on June 5, 1959.

The jurisdiction of the Supreme Court
the decision by appeal is conferred by Title 2
sections 1257(1) and 1257(2). The follow
sustain the jurisdiction of the Supreme Court
the judgment on appeal in this case: *Wissner*
ner, 338 U.S. 655; *Bethlehem Steel Co. v. N*
State Labor Relations Board, 330 U.S. 767; *I*
Telephone Corp. v. Wisconsin Employment
Board, 336 U.S. 18; *Ry. Employes Dept. v. Ho*
U.S. 225.

STATUTES INVOLVED

This appeal involves the validity of the Eleventh of the Railway Labor Act, 1934, c. 443, 48 Stat. 1163, U.S.C. 101, 1951, c. 1220, 64 Stat. 1238, U.S.C. 101 (Eleventh), which reads in pertinent

“Eleventh. Notwithstanding any provision of this Act, or of any other Act of the United States, or Territory, or any State, any carrier or carriers subject to this Act and a labor organization or organizations duly designated and authorized to represent employees in accordance with this Act shall be permitted—

“(a) to make agreements, on the condition of continued employment, for a period of days following the beginning of such agreement or the effective date of such agreement, whichever is the later, all employees shall be members of the labor organization or organizations of the craft or class: *Provided*, That no agreement shall require such condition of employment with respect to employees to whom no such condition is available upon the same terms as to those to whom it is generally applicable to any other employees with respect to employees to whom it was denied or terminated for any reason other than the failure of the employee to pay periodic dues, initiation fees, and other dues (including fines and penalties) as a condition of acquiring or retaining membership.

“(b) to make agreements providing for the production by such carrier or carriers of its or their employees in a payment to the labor organization or organizations of the craft or class of such employees for periodic dues, initiation fees, and

ty of section 2.
(Act of January
C. Title 45, § 152.
part as follows:

any other provi-
her statute or law
tory thereof, or of
riers as defined in
on or labor organi-
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requiring, as a con-
t, that within sixty
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agreements, which
shall become mem-
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providing for the de-
riers from the wages
a craft or class and
ization representing
employees, of any
and assessments (not

including fines and penalties) uniformly
as a condition of acquiring or retaining
ship: *Provided*, That no such agreement
effective with respect to any individual
until he shall have furnished the employe
written assignment to the labor organiz
such membership dues, initiation fees, and
ments, which shall be revocable in writi
the expiration of one year or upon the ter
date of the applicable collective agreement
ever occurs sooner.

* * * * *

“(d) Any provisions in paragraphs For
Fifth of section 2 of this Act in conflict
are to the extent of such conflict amended

Georgia Code, ch. 54-9:

Sections 54-901 through 54-904 provide:

“54-901 Definitions.—When used in this C

“(a) The term “employer” includes an
acting in the interest of an employer, di
indirectly, but shall not include the Unite
or any State, or any political subdivision
or any person subject to the Railway La
as amended from time to time, or any labor
ization (other than when acting as an en
or any one acting in the capacity of officer
of such labor organization.

“(b) The term “employee” shall incl
employee, and shall not be limited to the en
of a particular employer.

“(c) The term “employment” means
ment by an employer as defined in this C

“(d) The term “labor organization” m
organization of any kind, or any agency
poyee representation committee or plan,

employees participate and which purpose, in whole or in part, of employers concerning grievances, wages, rates of pay, hours of employment, or conditions of work.

"54-902. Membership in labor organization as a condition of employment.—No individual required as a condition of employment, to be or remain a member of a labor organization, or to refrain from membership in a labor organization.

"54-903. Payment to labor organization as a condition of employment.—No individual required as a condition of employment, to pay a sum of money to a labor organization, or other sum of money to a labor organization.

"54-904. Contracts requiring membership payments to, labor organizations as a condition of employment.—Any provision in a contract between an employer and a labor organization, which requires as a condition of employment, that any individual become or remain a member of a labor organization, or that any individual pay a sum of money to a labor organization, or that any individual pay a sum of money to a labor organization, is hereby declared to be contrary to public policy of this State. Any provision in any such contract hereafter made shall be absolutely void.

QUESTIONS PRESENTED

The following questions are presented for the appeal:

1. Whether the Supreme Court of the State of New York, in holding the union-shop amendment

n exists for the
dealing with em-
labor disputes,
employment or con-

organization as con-
individual shall be re-
ent, or of contin-
a member or an
or resign from or
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organization as con-
individual shall be
yment, or of con-
any fee, assess-
whatsoever, to a

membership in, or
ns as contrary to
in a contract be-
organization which
oyment, or of cop-
any individual be-
affiliate of a labor
individual pay any fee,
ney whatsoever, to
declared to be con-
tate, and any such
heretofore or here-
void."

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presented by this

f Georgia erred in
t to the Railway

Labor Act (as amended, sec. 2, Eleventh, A
10, 1951, 64 Stat. 1238, U.S.C. tit. 45, § 152,
unconstitutional and invalid.

2. Whether the Supreme Court of Georgia
holding that union-shop agreements entered
suant to the Railway Labor Act are unco
and invalid.

3. Whether the Supreme Court of Georgia
holding Georgia law and the laws of other S
and applicable to union-shop agreements
carrier subject to the Railway Labor Act and
designated representatives of its employees, c
acknowledged repugnance of such law so
section 2, Eleventh of the Railway Labor A
claimed repugnance to the Constitution of
States by reason of Congressional preempt
field.

4. Whether the Supreme Court of Georgia
affirming a judgment permanently enjoinin
formance of union-shop agreements subject
compliance with the Railway Labor Act.

5. Whether the Supreme Court of Georgia
holding that the use, by a union having a
agreement, of a part of its dues receipts fo
other than the negotiation and administrat
lective bargaining agreements concerning ra
rules and working conditions, or wages, ho
or other conditions of employment, violat
tional rights under the First and Fifth A
of employees subject to such union-shop ag

6. Whether the Supreme Court of Georgia
holding that the decision of the Supreme C
United States in *Railway Employees' Dept.*

351 U.S. 225, is inapplicable where it is found that a union having a union-shop agreement spends part of its funds for political and legislative purposes.

7. Whether the appellants were denied due process of law by the holdings of the Supreme Court of Georgia:

(a) That the procedural rulings of the trial court did not deny appellants a fair opportunity to defend this action.

(b) That a class action may properly be brought on behalf of persons whose membership in the class is determined by ascertaining a combination of mental attitudes of each person.

(c) That the plaintiffs in the trial court had standing to sue unions not representatives of the class in which they are employed, with respect to collective bargaining agreements not affecting them.

(d) Sustaining the same findings of fact with respect to all the union defendants despite the substantial difference in the evidence with respect to the several union defendants.

(e) Sustaining findings of fact not supported by any evidence.

STATEMENT OF THE CASE

The railroad companies are common carriers by railroad subject to the Interstate Commerce Act, comprising the Southern Railway System. As such they are "carriers" within the meaning of and subject to the Railway Labor Act. The labor union appellants, who are the real parties in interest as appellants, are

standard railway labor organizations which have at all material times been the collective bargaining representatives of their respective crafts or classes of employees of the Southern Railway, and the individual appellees are members of one of the crafts so represented.

One of the individual appellees is a resident of and employed in Mississippi, one is a resident of and employed in the District of Columbia, and the remaining four are residents of and employed in Georgia. All are represented for purposes of collective bargaining by appellant Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees. They purport to sue on behalf of all employees of any of the Southern Railway Companies represented in collective bargaining by any of the appellant unions, resident in the various states in which the Southern operates.

By the Act of January 10, 1951 (set forth above) Congress amended the Railway Labor Act so as no longer to prohibit all forms of union-security agreements but instead to permit union-shop agreements subject to the limitations and conditions prescribed by the statute. It was specifically provided that such agreements should be permitted "Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or territory thereof, or of any State." Thereafter, the railroad companies entered into union-shop agreements with the appellants substantially in the terms of the 1951 amendment to the Railway Labor Act, complying with all the conditions and incorporating all the limitations required by the Act. The agreements require (subject to certain conditions and limitations not relevant here) that all

employees covered by the basic collective bargain agreement between the carrier and the union, as a condition of their continued employment, become members of the union representing their craft class within 60 days after the beginning of such employment, or after the effective date of such agreement, whichever is later. However, no such condition of employment applies to any employee to whom membership is not available on the same terms and conditions as are generally applicable, nor to an employee who might be denied membership or whose membership might be terminated for any reason other than failure to tender the periodic dues, initiation fee and assessments (not including fines and penalties uniformly required as a condition of acquiring or maintaining membership. The union shop agreement involved here, except for the names of the parties, is identical with the union shop agreement before the Court in *Railway Employees' Department v. Hanson*, 351 U.S. 225.

The individual appellees chose not to comply with this condition upon their continued employment with the Southern. Instead they brought, or intervened in, this action seeking to enjoin the enforcement of the union shop agreements claiming that the agreements violated their rights under the Constitution of the United States and under the so-called "right-to-work" provisions of the statutes of Georgia and the laws of other States.

In January 1957 the appellants filed a motion to dismiss the complaint as theretofore amended on the ground that it failed to state a cause of action. At the hearing on that motion the individual appellees offered further amendments to the complaint alleging that

appellant unions used a portion of their dues receipts in support of legislative and political activities with which said appellees disagreed. The trial court accepted the amendments, treated the motion to dismiss as directed to the complaint as so amended, and so treating it granted the motion and dismissed the complaint on the authority of this Court's decision in the *Hanson* case, *supra*. On appeal to the Supreme Court of Georgia that Court reversed the trial court in what must be one of the most intemperate opinions ever issued by an American judicial tribunal. See Appendix A. In essence, it held that it need follow this Court's ruling in the *Hanson* case only with respect to the precise ruling, and not with respect to any implications except insofar as implications adverse to these appellants might be extracted from certain language in the *Hanson* opinion. The Supreme Court of Georgia was of the view that apparently this Court did not appreciate that unions engage in legislative and political activities, and was of the further view that certain language in the *Hanson* opinion could be interpreted to reserve decision on the constitutionality of section 2, Eleventh of the Railway Labor Act in permitting union shop agreements by unions that engaged in such activities.

On remand to the Superior Court of Bibb County, appellants were subjected to a host of astonishing and oppressive procedural rulings which appellants claimed deprived them of a fair opportunity to defend this case. After ultimate trial proceedings, the Superior Court entered the order attached hereto as Appendix C, declaring section 2, Eleventh unconstitutional insofar as it permitted the union shop agreements and holding the law of Georgia and other States

effective and applicable despite the declaration section 2, Eleventh that Congress preempted the and superseded State law.

How the federal question is presented. The complaint itself alleges that section 2, Eleventh of Railway Labor Act, to the extent that it authorizes the union shop agreements here involved, is violative of the First, Fifth, Ninth, and Tenth Amendments of the Constitution of the United States. R. 143-4. It also alleges that the union shop agreements are illegal and unconstitutional and in violation of the Georgia right-to-work laws and the laws of other States established by the railroads. Appellants of course controverted said allegations, alleged that the union shop agreements were executed in accordance with the Railway Labor Act, and admitted the allegation that in negotiating the union shop agreements they relied on the validity of section 2, Eleventh of the Railway Labor Act. The answer of the railroads likewise challenged the applicability of State laws to the union shop agreements in view of the specific preemption of the field by Section 2, Eleventh.

The Superior Court of Bibb County, on December 1958, issued its "Findings, Conclusions, Order, Judgment and Decree", a copy of which is attached hereto as Appendix C. In that document the Superior Court held that the union shop agreements violate the Constitution and law of Georgia and the law of other States in which the railroads operate. R. 186. It found also that said agreements violate the Constitution of the United States by invading the individual appellees' personal and property rights, including freedom of speech, freedom of press, freedom of thought, freedom to work, and political freedom.

rights. R. 186. In said document the Court also entered a declaratory judgment finding and declaring section 2, Eleventh of the Railway Labor Act unconstitutional to the extent that it permits union shop agreements under which dues receipts are spent in part for the complained of purposes and activities. R. 188. It entered also a declaratory judgment finding and declaring the enforcement of the union shop agreements illegal in that they deprived the plaintiffs of rights under the Constitution of the United States and the laws of the State of Georgia and other States, thus denying validity to the federal law and sustaining the validity of State law challenged for repugnance to the federal law and the supremacy clause of the Constitution. On appeal to the Supreme Court of Georgia that judgment with its multifarious other findings, declarations, and restraints, was affirmed.

The opinions of the Supreme Court of Georgia, if we understand them correctly, hold that by preempting the field and repealing the former prohibition of union shop agreements in the Railway Labor Act, Congress transgressed the limitations of the United States Constitution by requiring the individual appellees to do things Congress could not validly require them to do, and that section 2, Eleventh was ineffective to make the law of Georgia and other States inapplicable. In any event, regardless of the reasoning of the opinions, and whether or not we understand them, it is clear that the decision below denies validity to a statute of the United States and sustains the validity of State law repugnant to the federal statute and to the power of Congress under the Constitution to regulate interstate commerce. Further, it is clear that the decision below interprets

the decision of this Court in the *Hanson* case as not involving any question of the validity of section 2, Eleventh and union shop agreements executed thereunder in the presence of evidence and contention that the unions involved spend a portion of their funds in legislative and political activities, although the record and briefs and argument in this Court in the *Hanson* case are replete with such material and contentions.

THE QUESTIONS ARE SUBSTANTIAL

If the decision appealed from had been opposite to what it was, it might then well be considered to have been so clearly right that no substantial federal question would be involved. *Railway Employees' Department v. Hanson*, 351 U.S. 225; *Sandsberry v. International Association of Machinists*, 295 S.W. 2d 412, cert. den. 353 U.S. 918; *Otten v. S.I.R.T. Co.*, 205 F. 2d 58, 229 F. 2d 919, cert. den. 351 U.S. 983; *Wicks v. Brotherhood*, 121 F. Supp. 454, 231 F. 2d 130, cert. den. 351 U.S. 946. On the other hand, we find it difficult to conceive of a decision by the highest court of a State denying validity to a federal statute and giving effect to State laws despite their obvious repugnance to the federal statute that would not present substantial federal questions calling for review by this Court.

1. *The decision appealed from is clearly wrong.* This case is squarely covered by the decision of this Court in the *Hanson* case. Despite the refusal of the Supreme Court of Georgia to see it, the record and argument in the *Hanson* case squarely presented the issues of the validity of section 2, Eleventh and agreements executed thereunder where the unions executing

such agreements engage in legislative, political, and other activities other than the negotiation and administration of collective bargaining agreements. See *Hanson* record, pp. 103, 107, 109-10, 112, 115-16, 125-6, 126-8, 135-6, 143-4, 146, 151, 184-5, 204, 223, 256. See brief of Hanson et al. in the *Hanson* case, headings appearing on pp. 14, 16, 17, 58, 67, 68, 71, 75. Indeed, the decision of the Supreme Court of Nebraska, which this Court reversed in the *Hanson* case, held section 2, Eleventh and agreements entered into pursuant thereto invalid for precisely the reasons they were held invalid by the Court below, that is, because the unions spend part of their funds derived from dues for purposes other than the negotiation and administration of collective bargaining agreements. The decision of the Supreme Court of Nebraska, which this Court reversed in the *Hanson* case, was predicated on exactly the same basis as the decision below in this case.

Even prior to the decision of this Court in the *Hanson* case, this Court on a number of occasions decided cases involving union shop or closed shop agreements, consistently indicating that the question of whether such agreements should be unrestrictedly permitted, completely prohibited, or permitted subject to prescribed limitations, is a matter of policy for legislative determination rather than of constitutional requirements for determination by the courts. *Colgate-Palmolive-Peet Co. v. N.L.R.B.*, 338 U.S. 355; *Lincoln Union v. Northwestern Co.*, 335 U.S. 525; *A.F. of L. v. American Sash and Door Co.*, 335 U.S. 538; *Algoma Plywood Co. v. Wisconsin Emp. Rel. Bd.*, 336 U.S. 301.

2. *The decision appealed from is in decisions of other State and federal courts.*

Cited above are some of the federal and state decisions with which the decision below is in conflict. In this connection we call the attention of the Court to the decision of the Supreme Court of North Carolina which squarely and acknowledges the conflict with the views of the Supreme Court of the United States in a case presenting the same substantive evidence as the same contentions. *Allen et al. v. Southern Railway Company et al.*, 249 N.C. 491, 107 S.E. 2d 100 (1919). At the time of writing this Statement that decision was under reconsideration by the Supreme Court of North Carolina.) In that opinion, the Supreme Court of North Carolina recognizes the conflict between the views there expressed with the views of the Supreme Court of Georgia in this case, and suggests that the conflict is for resolution by this Court. We point out that the contract and parties in the *Allen* case are the same contract and parties involved in the case below. In both cases a few individuals purported to be members of the non-operating employees of the Southern Railway. In the North Carolina case the Supreme Court of North Carolina held that North Carolina residents and those in the Southern are subject to the agreement involved because the North Carolina law was superseded by section 2, Eleventh. But in this case relief is given to those very same North Carolina plaintiffs because the Georgia courts are of the opinion that the North Carolina law is applicable and is validly superseded by section 2. Eleventh.

3. *The decision involves important questions of the functioning of the Railway Labor Act. The agreements, in most cases identical with*

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ments here involved and in the remaining cases
stantially the same as the agreements here inv
have been entered into by appellants with almo
the railroads in the United States. Such agree
have been executed with all but one of the major
roads, and are in effect on all said railroads exce
the extent that the courts below have limited
enforcement on the Southern. The few railroad
organizations that are not parties in this case sim
have innumerable such agreements. The validi
all these agreements is challenged by the dec
below. In this case, appellants are prohibite
judicial decree from doing that which Congress
said they "shall be permitted" to do.

4. *The Supreme Court has jurisdiction to ente
this case on appeal under U.S.C. Title 28, Sec
1257(1) and 1257(2).* As we have pointed out a
appellants in the trial court relied on the auth
of Section 2, Eleventh of the Railway Labor A
supporting the validity of the union shop agree
under attack and the repugnance of State law t
federal law; indeed, the plaintiffs themselves i
trial court alleged that such was our position, an
admitted it. The individual appellees prayed
decree declaring the federal law unconstitutional.
such prayer was granted. There was thus "dra
question the validity of a * * * statute of the U
States", as required by Section 1257(1).
individual appellees also relied on State law
mining the validity of the agreements inv
although said law was repugnant to the federal
and would, under the supremacy clause of the
stitution, be invalid by reason of the congress
preemption. Thus there was "drawn in questio

validity of a statute of any state on the ground that it is being repugnant to the Constitution, treaties or laws of the United States, and the decision is based on its validity", as provided by Section 1257. Under the heading "Jurisdiction" above we cite several examples of the exercise of jurisdiction under the statutory provisions. We submit that the applicability of both Section 1257(1) and 1257(2) is clearly apparent in the instant case. The applicability of either of those sections is clearly shown in cases in which jurisdiction on appeal was

CONCLUSION

It is submitted that the decision of the Supreme Court of Georgia erroneously deprived the appellants of important rights guaranteed by the federal law, erroneously prevents the application of federal law, and erroneously subjects the appellants to provisions of state law that cannot be constitutionally applied to them. The questions presented for appeal are substantial and of public importance.

Respectfully submitted,

SCHOENE AND KRAMER

MILTON KRAMER
LESTER P. SCHOENE

ARNALL, GOLDEN & GREGORY

CLEBURNE E. GREGORY

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APPENDIX

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APPENDIX A**NANCY M. LOOPER, ET AL.****v.****GEORGIA SOUTHERN & FLORIDA RAILWAY CO.,**

No. 19685

Opinion of the Supreme Court of Georgia**June 10, 1957****By the Court:**

1. Where pursuant to terms of the employment contracts the petitioners were notified that unless they became members of a labor union within 60 days their employment would be terminated, the suit to enjoin such action and the contract void was not prematurely filed.

2. While we must follow the holding of the Supreme Court that closed shop employment contracts prohibited by Section Eleventh, of the Railway Labor Act, are valid, since that court has not held that an employee can be required to join a union which will use contributions he makes to promote ideological and political issues and cause him to oppose, we hold that the petition of these employees to enjoin the enforcement of the employment contracts and decree it void because of such uses of their contributions alleges a cause of action and it was error to grant the same.

This is an action for injunctive relief to prevent the defendants, composed of a number of railroad companies and various labor organizations which are the bargaining agents of the employees of such railroad carriers, enforcing a closed or union shop agreement entered into by the defendants and discharging the petitioners who are named employees of said railroad carriers unless they join or remain members of a union. The petitioners also pray that the so-called "union shop agreement" be declared void. The petitioners allege that the agreement requires the employees to join or remain members of the various labor organizations applicable to their craft or trade as a condition precedent to the continued employment with the various carriers by whom the petitioners are now employed and are threatened with discharge unless the actions of the defendants in enforcing such contract is enjoined. The contract is set out as an exhibit attached to the petition and requires all employees to become members of the labor organization party to this agreement representing their craft or class within 60 days after the effective date of the agreement. The contract is attacked as being illegal, unconstitutional and void, and in direct violation of the Georgia right to work laws (Code Ann. Supp., §§ 54-801 through 54-908; Ga. L. 1947, pp. 616-620), the Fifth and Fourteenth Amendments of the Federal Constitution, and certain named sections of the Georgia Constitution.

By amendment petitioners further allege that the initiation fees, periodic dues and assessments which they would be required to pay under the closed shop agreement will be used in substantial part for purposes not germane to collective bargaining but to support ideological and political doctrines and candidates which they are not willing to support, and cannot lawfully be forced to support, thus violating their constitutionality guaranteed rights of freedom of association, thought, liberty and property; and the contract and § 2, Eleventh, of the Railway Labor

Act (45 U.S.C.A. § 152, Eleventh), to the extent that it authorizes such union shop agreement, are violative of the First, Fifth and Ninth Amendments of the Constitution of the United States.

After consideration of a written motion to dismiss, brought by counsel for the labor union defendants which states that petitioners fail to state a claim against any defendants upon which relief can be granted, citing decisions of the Federal Supreme Court in support thereof; the lower court sustained the motion, dissolved a temporary injunction previously granted, and dismissed the action as to all defendants. The exception here is to this final judgment.

DUCKWORTH, Chief Justice. 1. The contract complained of was effective April 15, 1953. These petitioners were notified that unless they became members of the union within 60 days from the effective date of the contract their employment would be terminated. This notice accords with a clause in the contract. Thus is alleged and shown by the petitioners definite impending danger of losing their jobs unless this procedure which conforms to the alleged void contract is halted. While a mere apprehension will not authorize resort to equity, *Railway Emp. Dept. v. Hanson*, 351 U. S. 225, 76 S. Ct. 714; *Mayor, etc., of Athens v. Co-op Cab Co.*, 207 Ga. 505 (2) (82 S. E. 2d 906); *Nottingham v. Elliott*, 209 Ga. 481 (3) (74 S. E. 2d 93); *Armed Forces Service Co. v. Petree*, 211 Ga. 867 (1) (89 S. E. 2d 486), yet one is not required to await the infliction of the injury before seeking to prevent it by injunction. Indeed these petitioners would have appealed to equity too late if they had awaited the completion of the 60 days notice period and the overt act of discharging them. *Mount v. The Grand International Brotherhood of Locomotive Engineers*, 226 Fed. 2d 604; *Sandt v. Mason*, 208 Ga. 541 (67 S. E. 2d 767).

While as indicated above this appeal to equity for injunctive relief is based upon facts and not mere apprehension

and is therefore not premature, there is an additional reason why the judgment dismissing the amended petition can not be sustained upon the ground it is premature, that is the prayer that the contract be decreed illegal and void.

2. § 2, Eleventh, of the Railway Labor Act (45 U. S. C. § 152, p. 481) plainly authorizes the embodiment of a "closed shop" clause in contracts of employment, and such sweeping terms, nullifies all State laws in conflict therewith. The Supreme Court upheld the constitutionality of such a contract under the act in *Railway Emp. Dep. v. Hanson*, 351 U. S. 225, *supra*. To uphold a closed shop contract the court necessarily approved a denial of one's right to work because he is not a member of a labor union. We do not see a possibility of reconciling that ruling with the fact that it is based solely upon the status of the individual who is not that of non-union and is entirely lawful, with the following chain of decisions of the same court holding that one can not be lawfully denied the right to work because of his status as indicated therein—because he was a Roman Catholic priest, *Cummings v. State of Missouri*, 71 U. S. 277, 4 Wall. 277, 18 L. Ed. 356; a Chinese immigrant, *Wo v. Hopkins*, 118 U. S. 356, 6 S. Ct. 1064, 80 L. Ed. 433; a teacher of German, *Meyer v. Nebraska*, 262 U. S. 390, 23 S. Ct. 625, 67 L. Ed. 1042; a freight train conductor, *Smith v. Texas*, 233 U. S. 630, 34 S. Ct. 681, 58 L. Ed. 118; a State employee, *Wieman v. Updegraff*, 344 U. S. 183, 73 S. Ct. 215, 97 L. Ed. 216; a Negro, *Steele v. Louisville & N. R. Co.*, 323 U. S. 192, 65 S. Ct. 226, 89 L. Ed. 177; a teacher in a municipally supported school, *Slochower v. Board of Higher Ed. of City of New York*, 350 U. S. 551, 76 S. Ct. 637. It strikes us as being a futile gesture to solemnly declare the sacred and indestructible constitutional right of one to freedom of speech and freedom of worship, and to sanction a denial of that same one's right to work which is the indispensable economic support without which nei-

freedom could endure. One could not for long enjoy speaking and worshipping freely if he was hungry and was denied bread or the means of obtaining it.

Anyone familiar with the experiences of the thirteen original colonies under the dictatorial powers of the King as expressed in the Declaration of Independence, the reluctance of the States to surrender or delegate any powers to a general government as evidenced by the Articles of Confederation, and the demonstrated need for more powers in the area where jurisdiction was given the general government, will have no difficulty in clearly understanding the meaning of the Constitution when it defines those powers, and by the Ninth and Tenth Amendment removes all doubt but that powers not expressly conferred were retained by the States. Even the school children in these original States know that solely because of the erection by individual States of trade barriers inimical to other States, and the inability to remove this evil by State action, the commerce clause, art. 1, sec. 8, par. 3 (Code § 1-125), invested the general government with exclusive jurisdiction of interstate commerce to insure the free flow of commerce across State lines. But claiming authority under this clause the Congress, with the sanction of the Supreme Court, has projected the jurisdiction of the general government into every precinct of the States and assumed Federal jurisdiction over countless matters, including the right to work, which are remotely, if at all, related to interstate commerce. By this unilateral determination of its own powers the general government has at the same time and in the same manner deprived its creators, the States, of powers they thought and now believe they retained. But State courts, irrespective of contrary opinions held by their own judges which by law are required to have had experience as practicing attorneys before they can become judges of the law, must obey and accept the decisions of the Supreme Court of the United States pertaining to interstate commerce. We be-

lieve that a single person armed with right—the right to work—should in all courts of justice be able to defeat selfish demands of multitudes though they be members of a labor union who seek to deprive him of that right. No court would so rule in any case where we are allowed jurisdiction. When the Supreme Court has, as seen above, held a closed shop labor contract act valid we must likewise hold it valid not upon our own judgment, but solely because we are required to follow the Supreme Court ruling. We have made these observations to indicate our deep distress and the utter helplessness of a free American under this law and our inability to judge his cause according to our understanding of the Constitution.

We go now to the single point raised which the Supreme Court has, we believe, clearly indicated is still open for decision. The petition of these non-union employees alleges that they have been notified in accordance with the law and the contract of employment that unless they become members of a union within 60 days their employment will be terminated. It is alleged that the union dues and other payments they will be required to make to the union will be used to "support ideological and political doctrines and candidates" which they are unwilling to support and which they do not believe, and that this will violate the First, Fifth and Ninth Amendments of the Constitution. While *Railway Emp. Dept. v. Hanson*, 351 U. S. 225, sustained the validity of a closed shop contract except under § 2, Eleventh, that opinion clearly indicates that the court would not approve a requirement that one join the union if his contributions thereto were used as alleged in the petition alleges. It is there said "Judgment is reserved [italics ours] as to the validity or enforceability of a union or closed shop agreement if other conditions of membership be imposed or if the exaction of dues, initiation fees or assessments is used as a cover for enforcement of ideological conformity or other action in contravention of the First or the Fifth Amendments." We must rem-

judgment now upon this precise question. We do not believe one can constitutionally be compelled to contribute money to support ideas, politics and candidates which he opposes. We believe his right to immunity from such exaction is superior to any claim the union can make upon him.

Accordingly, the trial court erred in dismissing the amended petition which alleges that such uses will be made of dues and other money which as a member of the union petitioners would be required to contribute to the union.

Judgment reversed. All the Justices concur.

APPENDIX B

IN THE SUPREME COURT OF GEORGIA

Decided May 8, 1959.

By the Court:

20428. INTERNATIONAL ASSOCIATION OF MACHINISTS et al. v. STREET et al.

1. The plaintiffs in error not having excepted by cross-bill of exceptions to the order allowing the amendment of January 29, 1957, when this case was here before (*Looper v. Georgia Southern & Florida Ry. Co.*, 213 Ga. 279, 99 S.E. 2d 101), it is now too late to except to such order.

2. The amendment of September 23, 1958 to the petition was not subject to the objections interposed.

3. Unless the legal rights of the parties are prejudiced or denied, this court will not interfere with the discretion of the trial court in matters of practice in the hearing and disposition of causes before it unless this discretion has been exercised in an illegal, unjust or arbitrary manner.

4. The findings of fact and conclusions of law in the final decree are fully supported by the evidence.

5. The plaintiffs and the class they represent have a common interest in the subject matter of the litigation and the ultimate issues to be decided. The objections made by the court that this was properly a class action under Code § 37-1002 are without merit.

6. The finding by the court in its decree that the defendant unions were using the funds derived from the payment of dues, fees and assessments from their members to propagate and promote political and economic concepts and ideologies opposed by the plaintiffs they represent, was demanded by the evidence.

7. The finding by the court that the expenditure of such union funds in the form of dues, fees and assessments, by the defendant unions, was by virtue of the closed shop arrangement between the defendant railroads and the defendant unions, permitted under Section 2. (Eleventh) of the National Labor Act (45 U.S.C. Sec. 151 et seq.); and that the use of such union funds for the purposes set out in the preceding headnote, was violative of the plaintiffs' rights under the First and Fifth Amendments to the Constitution of the United States, was authorized by the law and the facts.

ALMAND, Justice. When this case was brought on a bill of exceptions assigning error on the grounds stated in the plaintiffs' petition, we reversed the order of the court because, by reason of the allegations of plaintiffs in the amended petition that, "The initiation fees, dues and assessments which plaintiffs would be required to pay under the terms of the union shop agreement before referred to will be used in substantial part for purposes not germane to collective bargaining but for the propagation of political and political doctrines and candidates for office, plaintiffs are not willing to support and cannot

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forced to support, thus violating plaintiffs' constitutionally guaranteed rights of freedom of association, thought, and property," and of paragraph 51 of the amendment that, "Petitioners allege that Sec. 2 Eleventh Railway Labor Act (45 U.S.C.A. Sec. 152 Eleventh) to the extent that it authorizes the union shop agreement here referred to, and said agreement, are violative of the First, Fifth and Ninth Amendments to the Constitution of the United States of America, and are therefore invalid," the petition as against a general demurrer is sufficient to state a cause of action for equitable relief. (Loop v. Georgia Southern & Florida Ry. Co., 279, 99 S. E. 2d 101). We there said, that though the ruling of the Supreme Court of the United States as to the validity of a closed shop agreement executed under Sec. 2, Eleventh, of the Railway Labor Act (45 U.S.C.A. Sec. 152) is in view of the statement made in the opinion that, "The Court is reserved as to the validity or enforceability of a union or closed shop agreement if other conditions of membership are imposed or if the exaction of dues or initiation fees or assessments is used as a cover for ideological conformity or other action in contravention of the First or the Fifth Amendment," the question is whether the closed shop agreement violated the plaintiffs' rights under the First and Fifth Amendments to the Federal Constitution, under the alleged facts in the petition as stated, was left open for future determination.

When the case was returned to the trial court the union defendants filed their answers. At a pre-trial hearing the trial judge entered an order requiring the union defendants to produce certain books, documents and records and the appearance of officers and agents to testify with respect to the same. The motion of the union defendants to suspend the order until their plea of res adjudicata could be heard was denied. On September 23, 1958 the plaintiffs filed an amendment to their petition. The objections of the union defendants to this amendment were overruled.

later pre-trial hearing the plea of res adjudicated. A stipulation of facts, executed by all parties on August 14, 1958 was approved by the court. This stipulation consists of 85 stipulations covering all issues. We set out here only those stipulations we deem relevant to the issues.

2. "Each of the plaintiffs and each of the railroad defendants was an employee of one of the railroad defendants herein (collectively constituting the Southern Railway System) in a craft or trade covered by the shop agreement at the commencement of this litigation.

3. "Some of the plaintiffs and intervening parties were not now, and never have been, members of any railroad defendant labor union organizations (their status protected by supersedeas bond).

8. "Each of the plaintiffs, and intervening parties, and the class they represent received notice, both from the railroad defendant employer and the labor union, that the craft or trade applicable to his or her craft or trade, that union became a member of the appropriate labor union within 60 days of the date he or she commenced compensated service for the railroad defendant. If 60 days of the effective date of the union membership whichever is the later, such employment was terminated and such employee dismissed pursuant to the shop agreement.

12. "The union shop agreement referred to in paragraph 1 above was negotiated by the labor union and the railroad defendants without any authority from the employees of such railroad defendants employers in the craft or trade applicable to each labor union [ital. ours] other than such authority as may be derived from each labor union defendant's being a duly authorized bargaining representative of employees with

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union shop agreement did not, involve any notice
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respect to such negotiation and execution of the union
agreement, or any opportunity to ratify or reject
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14. "Each of the plaintiffs and intervening plainti
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19. "The periodic dues, fees and assessments which
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20. "The mechanism by which the periodic assessments required to be paid under the union shop agreement were, are and will be a substantial part to support ideological and political and candidates for public office which plaintiffs, and the class represented by them, are required to support, is as set forth in this Stipulation.

A substantial portion of the periodic dues and assessments required of plaintiffs, intervening parties, the class they represent, or which will be so assessed, has been, is being and will be retained by, or received by, each individual local lodge of the labor union defendants, and each such person paid and will be required to pay, and has been, is being, and will be, used to support legislative activity in the legislatures of the States and Territories covered by the membership of such local lodges, and miscellaneous general legislation not confined to labor, involving the negotiation, maintenance and administration of agreements concerning rates of wages, working conditions, or wages, hours, terms and conditions of employment, or the handling of grievances, in addition to the above and, except in Wisconsin, New Jersey, Pennsylvania, Indiana, Texas and Iowa, to effect financial support to candidates for public office in the executive, legislative and judicial branches of the State and local governments in the locality of the local lodges [ours].

21. "Some of the legislative and political activities referred to in the preceding paragraph are carried out by some of the individual local lodges of the labor union defendants, and in some situations, such activities are carried out and will be carried out on a cooperative basis by lodges of several of the defendant unions coordinated not only between themselves, but also with local lodges of unions not defendants in this litigation, through the national and local AFL-CIO central bodies and

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from the general dues funds of the national or gran
organization of a particular labor union defendant.

In each instance where 'general fund' or 'gener
fund' or like phrase is employed in this Stipulation
(except where used in reference to the Machinists N
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29. "Railway Labor's Political League was form
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support candidates for public office at the State an
level; for publicity to support candidates on the nat
well as the State and local level; for administra
penses to operate Railway Labor's Political Leag
erally (including the salaries of the paid employees
organization, office expense, supplies, etc.); and for

lanebus activities in supporting candidates, intervening plaintiffs, and the election (to oppose) at the national, State or local level. Transportation of voters to and from the polls, distribution of voting records, preparation of sample ballots, and the preparation of various types of political literature soliciting support for candidates for public office at State and local levels.

The administration, operation and maintenance of 'free' fund activities of Railway Labor Board has been, is and will be financed and maintained by expenditures from the 'educational' fund of the labor union defendants. The Political League derived from the fund of the labor union defendants.

43. "The funds expended by the labor union defendants for political activities as set forth in the Facts are substantial, and the proportion of the periodic dues, fees and assessments paid, or which will be required to be paid by the labor union defendants and the election plaintiffs and the election defendants are also substantial, and the amounts expended are and will be used ultimately for political purposes also substantial.

44. "The plaintiffs, intervening plaintiffs, and the election plaintiffs they represent have been and are operating their money by the labor union defendants. Executives Association, Railway Labor Board, Machinists Non-Partisan Political League, Federation of Labor and Congress of Industrial Organizations, and the Committee on Political Action of the AFL-CIO which they have been, are and will be required to pay in dues, fees and assessments to support of the legislation, ideological doctrines and candidates for public office are and will be supported and endorsed.

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way Labor's Political League, the Machinists Non-Partisan Political League, the AFL-CIO or the latter's Committee on Political Education, as set out in this Stipulation of Facts and the depositions referred to in the Stipulation attached hereto, does not involve participation by the plaintiffs, intervening plaintiffs and the class they represent; the views of plaintiffs, intervening plaintiffs and the class they represent have not been sought; and they have not ratified such activities or programs, nor have they acquiesced therein."

The stipulation also details the amounts of dues or fees paid by named plaintiffs to specific defendant unions under the terms of the bargaining agreement.

The cause, by agreement of the parties, was heard by the court without the intervention of a jury on plaintiffs' prayers for a permanent injunction. After a hearing and argument of counsel, the court entered an order, consisting of findings of fact, conclusions of law and a final decree granting the relief sought by the plaintiffs. The court found and decreed that: (1) "The court has jurisdiction of all parties and of the causes of action asserted by the plaintiffs. This is a class action in which the plaintiffs represent herein all non-operating employees of the railroad defendants affected by, and opposed to, the hereinafter referred to union shop agreements, who also are opposed to the collection and use of periodic dues, fees and assessments for support of ideological and political doctrines and candidates and legislative programs or for other purposes other than the negotiation, maintenance and administration of agreements concerning rates of pay, rules and working conditions, or wages, hours, terms or other conditions of employment or the handling of disputes relating to the above. The individual defendants and labor organization defendants represent all the members of said labor organization defendants; (2) "Effective April 15, 1953, the labor organization defend-

ants, without authority from the employees represented by them but relying upon such authority as might be implied from the Railway Labor Act, and without affording said employees any opportunity to express themselves with respect thereto, entered into union shop agreements with the railroad defendants. The union shop agreements provide, in part, that all non-operating employees of the railroad defendants, including plaintiffs and those represented by plaintiffs, must 'as a condition of their continued employment subject to such agreements, become members of the organization party to this agreement representing their craft or class (the labor organization defendants herein) within sixty (60) calendar days of the date they first perform compensated service as such employees after the effective date of this agreement, and thereafter shall maintain membership in such organizations' and that 'Nothing in this agreement shall require an employee to become or to remain a member of the organization if such membership is not available to such employee upon the same terms and conditions as are generally applicable to any other member, or if the membership of such employee is denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership'; (4) "Pursuant to the said union shop agreements, and, except as indicated in paragraph (3) above, each of the plaintiffs and each member of the class they represent has been, is being, and, unless the injunction requested by them is granted, will be compelled to pay initiation fees, reinstatement fees and periodic dues in substantial amounts to the labor organization defendant representing his or her craft or trade as a condition of employment or continued employment, and to become or remain a member of said labor organization defendant; (5) "The funds so exacted from plaintiffs and the class they

represent by the labor union defendants have been are being, used in substantial amounts by the latter to support the political campaigns of candidates for the office of President and Vice President of the United States and for the Senate and House of Representatives of the United States, opposed by plaintiffs and the class they represent, and also to support by direct and indirect financial contributions and expenditures the political campaigns of candidates for State and local public office opposed by plaintiffs and the class they represent. said funds are so used both by each of the labor union defendants separately and by all of the labor union defendants collectively and in concert among themselves and with other organizations not parties to this suit through associations, leagues, or committees formed for that purpose; (6) "Those funds have been and are being used in substantial amounts to propagate political and economic doctrines, concepts and ideologies and to promote legislative programs opposed by plaintiffs and the class they represent. Those funds also have been and are being used in substantial amounts to impose conformity on plaintiffs and the class they represent, as well as on the general public, conformity to those doctrines, concepts, ideologies and programs; (7) "The exaction of said money from plaintiffs and the class they represent for the purposes and activities described above is not reasonable, necessary to collective bargaining or to maintaining the existence and position of said union defendants as effective bargaining agents or to inform the employees whom said defendants represent of developments of mutual interest; (8) "The exaction of said money from plaintiffs and the class they represent, in the fashion set forth above by the labor union defendants, is pursuant to the union shop agreements and in accordance with the terms and conditions of those agreements. Said union shop agreements were negotiated and entered into and are maintained, administered and enforced by the labor union defendants.

pursuant to the provisions of the Railway Labor Act (45 U.S.C. Sect. 151 *et seq*) and particularly Section 2 (First), (Second), (Third), (Fourth), (Seventh), and (Eleventh), 5, 6 and 10 thereof. Said union shop agreements are permitted by Section 2 (eleventh) of the Railway Labor Act (45 USC 152) 'notwithstanding any other provision of this Act, or of any other statute or law of the United States, or territory thereof, or of any State.' Said exaction and use of money and said union shop agreements and their enforcement are contrary to the Constitution, the law and public policy of this State, and are contrary to the statutes or laws of other states in which the defendant railroads operate. Said exaction and use of money, said union shop agreements and Section 2 (eleventh) of the Railway Labor Act and their enforcement violate the United States Constitution which in the First, Fifth, Ninth and Tenth Amendments thereto guarantees to individuals protection from such unwarranted invasion of their personal and property rights, (including freedom of association, freedom of thought, freedom of speech, freedom of press, freedom to work and their political freedom and rights) under the cloak of federal authority." On the basis of these findings the trial court perpetually enjoined the defendants "from enforcing the said union shop agreements (copies of which are attached as exhibits to the petition herein) and from discharging petitioners, or any member of the class they represent, for refusing to become or remain members of, or pay periodic dues, fees, or assessments to, any of the labor union defendants, provided, however, that said defendants may at any time petition the court to dissolve said injunction upon a showing that they no longer are engaging in the improper and unlawful activities described above;" and granted money judgments in favor of three plaintiffs.

The union defendants filed their bill of exceptions in this court in which they assigned error on interlocutory

rulings and the final decree, generally and specially, of trial court.

1. Error is assigned on the order allowing the amendment of January 29, 1957 over the objection that it is too late to change the cause of action (that the closed union shop agreement violated the First, Fifth, Ninth and Tenth Amendments to the Federal Constitution). This exception cannot be entertained because the order accepted to was entered prior to the order dismissing the petition, which order was reviewed and reversed by the court in *Looper v. Georgia Southern & Florida Ry.*, supra, and the union defendants not having sought review of the order of January 29, 1957 by cross-motion exceptions, it is too late now to except. *Gaulding v. Gaulding*, 210 Ga. 638 (81 S.E. 2d 830); *Carmichael Co. v. McClelland*, 213 Ga. 656 (100 S.E. 2d 902).

2. Error is assigned on the order allowing the amendment to plaintiffs' petition of September 23, 1958 in which this amendment certain paragraphs of the petition were deleted and new paragraphs inserted. This amendment set out specific facts as to the employment of the plaintiffs with the railroad defendants and alleged that the dues, fees and assessments required by the union defendants are being and will be used to espouse and support political and economic ideologies repugnant to the plaintiffs and the class they represent. It further alleged that the sole authority under which the union defendants reported and purport to bargain and contract with the railroad defendants is by virtue of the Railway Labor Act (45 U.S.C.A. §§ 152, 156) and that the closed shop contract executed by the defendants is contrary to the public and public policy of the State of Georgia; and, inasmuch as the Railway Labor Act permits or authorizes the union defendants to use the dues, fees and assessments paid by union members for ideological and economic doctrine

support political candidates, which and whom the plaintiffs oppose, the same violates the provisions of the First, Fifth, Ninth and Tenth Amendments to the Federal Constitution. The objections to this amendment were on the grounds that (a) it changed the cause of action, (b) sought to change the theory of the case, (c) sought further relief not theretofore sought and (d) the assertion of federal rights was precluded because of the plaintiffs' motion to remand the case from the Federal District Court.

There is no merit to any of these objections. When the case was reviewed by this court (*Looper v. Georgia Southern & Florida Ry. Co.*, supra) the plaintiffs' right to proceed was sustained by reason of the allegations that the agreement violated federal rights. The amendment merely elaborated the allegations originally asserted.

3. On May 8, 1958 at a pre-trial hearing the court granted plaintiffs' oral motion requiring the defendant unions to produce books, records and documents over the objection that the defendant unions had no notice that such motion would be presented. Subsequently, the union defendants filed a motion, which was denied, to suspend this order until their plea of *res adjudicata* was passed upon. (The record discloses that this plea was subsequently withdrawn). It is asserted that these orders deprived the defendant unions of due process of law and the equal protection of the law as guaranteed by the Fourteenth Amendment, in that these rulings deprived them of an adequate opportunity to defend the case. (The bill of exceptions recites that no constitutional questions were made or argued to the court and no objection was made to the introduction of the stipulation of facts). It is further asserted that after all the evidence had been introduced the court denied the oral request of counsel for the defendant unions to postpone oral argument until a transcript of the proceedings had been completed and brief prepared; and that after the court had orally announced

its conclusions, and counsel had presented suggested order, the court allowed counsel ant unions insufficient time, before signing consider and offer objections as to the term They contend that this hasty procedure de their right to make a proper and adequate

Unless the legal rights of the parties or denied, this court will not interfere with of the trial court in matters of practice in t disposition of causes before it unless this power has been exercised in an illegal, unju manner. *Johnson v. Holt*, 3 Ga. 117(1); *Coop* Ga. 473(3); *Mayor &c. of the City of Cuth* 49 Ga. 179(2); *Branch v. The Planters' Lor* Bank, 75 Ga. 343(1). We have carefully error assigned on the manner in which heard and disposed of the motions and r trial of this case and cannot say that his them was illegal, arbitrary or an abuse of

4. We next consider the assignments of error findings of fact and conclusions of law co final decree. These objections are set o 5-11 incl., 13-18 incl. and 22 of the bill of would serve no useful purpose to enumer objections here. The findings and conclusio are fully supported by the pleadings and th we find no error in these assignments of e

5. To the provision of the final decree that an adjudication of the basic common righ the plaintiffs in their own behalf and in l employees of the defendant railroads simil the union defendants assign error on the the case cannot properly or lawfully ad of persons other than the named plaintiffs ing plaintiffs because the persons describe

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ing the class cannot properly constitute a class for the purpose of a class action," and "that a class action not be brought or maintained on behalf of a group of components of which are determined by ascertainable mental attitude of persons concerning certain matters. The case as finally amended was on behalf of plaintiffs and all others similarly situated, who had a common interest in the relief sought. There were no demurrers interposed that the complaint was not a proper class action as permitted under Code § 37-1002. The stipulation of facts contains the following:

5. "There are a substantial number of other employees of the railroad defendants who similarly have been repelled by the union shop agreement, against their will, to become members of the defendant labor union organizations in order to maintain their employment.

6. "There were a substantial number of employees of the railroad defendants whose employment was terminated against their wishes, although their services were necessary, by reason of the enforcement of the union shop agreement and the refusal of such persons to become members of the labor union defendants.

7. "The plaintiffs and intervening plaintiffs fail to adequately represent for the purposes of this litigation the interests of the employees and former employees of the railroad defendants specified in the two paragraphs, as well as those whose status as members of one of those two groups has not as yet been determined, these being all those employees or former employees of the railroad defendants affected by the union shop agreement who also are required to pay to the periodic dues, fees and assessments which they have been, are and will be required to pay to support ideological and political doctrines and candidates and legislative programs set forth in this Stipulation of Facts and the provisions referred to in the Stipulation attached hereto.

for other purposes other than the negotiation and administration of agreements concerning rules and working conditions, or wages, other conditions of employment or the hand relating to the above."

The plaintiffs and the class they represent have a common interest in the subject matter of the ultimate issues decided. The objection in the first phase of the decree is without merit. See *Co. v. Hicks*, 185 Ga. 507 (195 S.E. 564); *Memphis & Nashville Ry. Co.*, 191 Ga. 395 (1949); *Liner v. City of Rossville*, 212 Ga. 664 (94

6. The court found as a matter of fact that the funds have been and are being used in substantial part to propagate political and economic doctrines and ideologies and to promote legislative action proposed by plaintiffs and the class they represent. The funds also have been and are being used to make contributions to amounts to impose upon plaintiffs and the class they represent, as well as upon the general public, to those doctrines, concepts, ideologies and ideologies. "The exaction of monies from plaintiffs and the class they represent for the purposes and activities set out above is not reasonably necessary to collect or to maintaining the existence and perpetuation of the union defendants as effective bargaining agents to inform the employees whom said defendants represent of developments of mutual interest." Under the ruling (*Looper v. Georgia Southern & Florida Ry. Co.* supra) that the allegations of the petition were held to state a cause of action for equitable relief, the finding became the law of the case, the evidence before the trial court not only authorized, but demanded by the court that the plaintiffs had proved what was laid in the amended petition. In the statement of the case we have set out the pertinent portions

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94 S.E. 2d 862).

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lation of facts. The record in this case contains
pages which in the main consists of documentary
To brief the evidence or to state a capsule sum-
the same would serve no useful purpose. We
viewed this evidence. It fully supports the con-
of the trial court.

7. The court found as a matter of law that:

(8) "The exaction of said money from plaintiffs
the class they represent, in the fashion set forth
by the labor union defendants, is pursuant to the
shop agreements and in accordance with the terms
conditions of those agreements.

"Said union shop agreements were negotiated
tered into and are maintained, administered and
by the labor union defendants and the railroad def-
pursuant to the provisions of the Railway Labor
U.S.C. Sect. 151 *et seq.* and particularly Section 2
(Second), (Third), (Fourth), (Seventh) and (Eighth)
5, 6 and 10 thereof.

"Said union shop agreements are permitted by
2 (eleventh) of the Railway Labor Act (45 U.S.C.
"notwithstanding any other provision of this Act
any other statute or law of the United States, or
thereof, or of any State.

"Said exaction and use of money and said union
agreements and their enforcement are contrary
Constitution, the law and public policy of this State
are contrary to the statutes or laws of other States
which the defendant railroads operate. Said
and use of money, said union shop agreements and
tion 2 (eleventh) of the Railway Labor Act and
enforcement violate the United States Constitution
in the First, Fifth, Ninth and Tenth Amendments
guarantees to individuals protection from such
arbitrary invasion of their personal and property

(including freedom of association, free freedom of speech, freedom of press, free their political freedom and rights) under eral authority." Division 11 of the assigns error on this conclusion.

In our opinion it cannot be disputed shop agreement between the railroad and was executed only by virtue of Section the Railway Labor Act (45 U.S.C.A. § 15 tion of the federal act permits or allows to make contracts in violation of the com of the plaintiffs, they have the right validity of the contract in so far as it ma rights under the Federal Constitution. Dept. v. Hanson, 351 U.S. 225 (76 S. Ct. 1112); American Communications Assoc 339 U.S. 382 (70 S. Ct. 674, 94 L. Ed. 925 Ry. Co., 323 U.S. 192 (65 S. Ct. 226, 89 I

The fundamental constitutional question tract between the employers of the plainti defendants, which compels these plaintiffs, to work for the employers, to join the un spective crafts, and pay dues, fees and as unions, where a part of the same will be political and economic programs and cand office, which the plaintiffs not only do app violate their rights of freedom of speech a of their property without due process of law and Fifth Amendments to the Federal Co

The Bill of Rights does not confer right "shall not" of what the government, its acting under the aegis of its authority can the enumerated rights of the individual. of Independence contained 27 specification that the English King and Parliament ha individuals living in the American Colonie

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was a declaration of protest against trespass by go-
on the rights of individuals and an affirmation of the
rights of man so forthrightly set forth more than
dred years later in the Bill of Rights. Chapter 29
Carta declared: "No freeman shall be taken or im-
prisoned or disseized of his freehold or liberties or free con-
ditions or outlawed or exiled or in any way destroyed; nor
shall we go upon him, nor send upon him but by the law of
the land or by peers or by law of the land."

During Georgia's colonial period its citizens were
to pay for the support of one religious denomination
to the exclusion of others. To guarantee the people of
Georgia that no one should ever be compelled to attend or
belong to any church, contrary to his own faith and judgment,
to restrain the arm of government from ever attempting
directly or indirectly, to mould the religious beliefs of the
people, the Constitution of Georgia of 1798 contained the
provision: "No person within this State shall, upon pain of
penalty, be deprived of the inestimable privilege of worshipping
God in a manner agreeable to his own conscience; nor shall he
be compelled to attend any place of worship contrary to
his own faith and judgment; nor shall he ever be compelled
to pay tithes, taxes, or any other rate, for the support or
repairing any place of worship, or for the maintenance
of any minister or ministry, contrary to what he conscientiously
thinks to be right, or hath voluntarily engaged to do. No
religious society shall ever be established in this State in
preference to another; nor shall any person be deprived of the
enjoyment of any civil right merely on account of his religious
principles." Art. 4, Sec. 10.

The Bill of Rights are the untouchable rights of the individual wherein the exercise of them, no harm results to others or to the public. Coercion or compulsion is the antithesis of freedom or liberty. In the free choice, support or association, of or with the people, the economic views of others, the individual has the

right not only to disagree but to rebellion or restraint in the exercise of the right. Mr. Justice Douglas in his dissenting opinion in *United States v. United Fruit & Sugar Corp.*, 343 U.S. 351 (72 S.Ct. 813, 96 L. Ed. 1491), gave the meaning of liberty as used in the First Amendment. "The right to be let alone is indeed a part of the right of freedom. . . . Compulsion which can be as real as compulsion which is legal." *Id.*

Certain observations of the late Mr. Justice Brandeis in writing the majority opinion for the Court in *Board of Education v. Barnette*, 319 U.S. 263 (42 S.Ct. 815, 87 L. Ed. 1628), a case involving the constitutionality of rules adopted by a local board of education in violation of a state statute, requiring students to salute the flag and pledge allegiance upon penalty of expulsion for refusal to do so, are of repetition here. In holding that such rules violated the First and Fourteenth Amendments, Mr. Justice Jackson said: "The very purpose of a Bill of Rights is to withdraw certain subjects from the vicissitudes of ordinary controversy, to place them beyond the reach of majority officials and to establish them as inviolable by the courts. One's right to free speech, to free press, to free assembly, and other fundamental rights, submitted to vote; they depend on the majority. . . . Those who hold the power of dissent soon find themselves the dissenters. Compulsory unification of opinion is the unanimity of the graveyard [at page 638]. . . . Those who set up government by consent of the governed, the Bill of Rights denies those in power any authority to coerce that consent [at page 641]. The very star in the constitutional constellation

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1068), in discussing the
Fifth Amendment said:
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Mr. Justice Jackson in
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9 U.S. 624 (63 S.Ct. 1178,
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of opinion achieves only
[at page 641]. . . . We
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any legal opportunity to
11]. . . . If there is any
constellation, it is that

no official, high or petty, can prescribe what sh
dox in politics, nationalism, religion, or othe
opinion or force citizens to confess by word
faith therein. If there are any circumstance
mit an exception, they do not now occur to
[42]."

One who is compelled to contribute the fruits
to support or promote political or economic
support candidates for public office is just as m
of his freedom of speech as if he were compelled
vocal support to doctrines he opposes. Abra
asserted a similar view when he said: "I belie
vidual is naturally entitled to the fruits of his
as it in no wise interferes with any other m
There is a common saying that, "Money talks
louder than the spoken word." In the case at
sonal convictions of the plaintiffs on political
issues are being combatted by the use of th
contributions to foster programs and ideos
they oppose.

This is not a case where the plaintiffs
employment with the railroads which have
agreements providing that to be employed
be required to join a union, but one where
in the employ of the railroads at the time
agreements were entered into between the
They are now confronted with the choice of e
the union or surrendering their jobs and bene
from tenure of service, and seeking work elsev
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of his employment, that he agree not to join
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by the Railway Labor Act, 45 U.S.C.A. § 152
tional Relations Act, 29 U.S.C.A. § 157) is obr
employee's economic freedom to contract, ther
ment by the employer, based upon an act of

Congress, that one in his employ as a condition of continued employment, would be compelled to join a union and pay dues, fees and assessments which will be used in part for the support of ideologies he opposes, is likewise violative of his freedom to contract under the Fifth Amendment.

While these observations of the Bill of Rights may appear as being old-fashioned and representative of the views of statesmen and judges long since dead, and not in harmony with some schools of thought that maintain that the Constitution must be construed or applied to meet new conditions in the light of present day thought, and that the Constitution must be expanded or contracted—as if it were an elastic girdle—to accommodate the public diet, we will continue to adhere to the view that the Constitution can only be changed by the method provided therein.

In light of our prior decision in this case, and what has been said above and the evidence in this case, the final decree was not erroneous for any reason assigned.

Judgment affirmed. All the Justices concur.

APPENDIX C

BIBB SUPERIOR COURT

No. 16,537

NANCY M. LOOPER, *et al.*,

v.

GEORGIA SOUTHERN & FLORIDA RAILWAY COMPANY, *et al.*

Findings, Conclusions, Order, Judgment and Decree

The above-styled cause, by agreement of all parties having come on regularly to be tried by this Court without a jury, November 10 to 13, and November 20, 1958. The

Court, after receiving evidence and hearing oral argument and considering the entire record finds and concludes that:

(1) The Court has jurisdiction of all parties and of the causes of action asserted by the plaintiffs. This is a class action in which the plaintiffs represent herein all non-operating employees of the railroad defendants affected by, and opposed to, the hereinafter referred to union shop agreements, who also are opposed to the collection and use of periodic dues, fees and assessments for support of ideological and political doctrines and candidates and legislative programs or for other purposes other than the negotiation, maintenance and administration of agreements concerning rates of pay, rules and working conditions, or wages, hours, terms or other conditions of employment or the handling of disputes relating to the above. The individual defendants and labor organization defendants represent all the members of said labor organization defendants.

(2) Effective April 15, 1953, the labor organization defendants without authority from the employees represented by them but relying upon such authority as might be implied from the Railway Labor Act, and without affording said employees any opportunity to express themselves with respect thereto, entered into union shop agreements with the railroad defendants. The union shop agreements provide, in part, that all non-operating employees of the railroad defendants, including plaintiffs and those represented by plaintiffs, must "as a condition of their continued employment subject to such agreements, become members of the organization party to this agreement representing their craft or class (the labor organization defendants herein) within sixty (60) calendar days of the date they first perform compensated service as such employees after the effective date of this agreement, and thereafter shall maintain membership in such organizations" and that "Nothing in this agreement shall require

an employe to become or to remain a member organization if such membership is not available employe upon the same terms and conditions generally applicable to any other member, or if the ship of such employe is denied or terminated for any other than the failure of the employe to tender the dues, initiation fees, and assessments (not including and penalties) uniformly required as a condition quiring or retaining membership."

(3) Said union shop agreements are being enforced by the labor organization defendants and the railroad defendants with respect to plaintiffs and the class they represent, except as to three of the named plaintiffs who have filed bonds pursuant to order of this Court pending the effectiveness of the agreements pending determination of this litigation, and as to them the shop agreements would be enforced but for the filing of such bonds.

(4) Pursuant to the said union shop agreements except as is indicated in paragraph (3) above, each plaintiff and each member of the class they represent, is being, and, unless the injunction requested of them is granted, will be compelled to pay initiation fees, reinstatement fees and periodic dues in substantial amounts to the labor organization defendant representing her craft or trade as a condition of employment, continued employment, and to become or remain a member of said labor organization defendant.

(5) The funds so exacted from plaintiffs and the class they represent by the labor union defendants have been, and are being, used in substantial amounts by them to support the political campaigns of candidates for the offices of President and Vice President of the United States and for the Senate and House of Representatives of the United States, opposed by plaintiffs and the class they represent, and also to support by direct and

financial contributions and expenditures the political campaigns of candidates for State and local public offices, opposed by plaintiffs and the class they represent. The said funds are so used both by each of the labor union defendants separately and by all of the labor union defendants collectively and in concert among themselves and with other organizations not parties to this action through associations, leagues, or committees formed for that purpose.

(6) Those funds have been and are being used in substantial amounts to propagate political and economic doctrines, concepts and ideologies and to promote legislative programs opposed by plaintiffs and the class they represent. Those funds have also been and are being used in substantial amounts to impose upon plaintiffs and the class they represent, as well as upon the general public, conformity to those doctrines, concepts, ideologies and programs.

(7) The exaction of moneys from plaintiffs and the class they represent for the purposes and activities described above is not reasonably necessary to collective bargaining or to maintaining the existence and position of said union defendants as effective bargaining agents or to inform the employees whom said defendants represent of developments of mutual interest.

(8) The exaction of said money from plaintiffs and the class they represent, in the fashion set forth above by the labor union defendants, is pursuant to the union shop agreements and in accordance with the terms and conditions of those agreements.

Said union shop agreements were negotiated and entered into and are maintained, administered and enforced by the labor union defendants and the railroad defendants pursuant to the provisions of the Railway Labor Act (45 U.S.C. Sect. 151 *et seq*) and particularly Section 2(First).

(Second), (Third), (Fourth), (Seventh) and (Eleventh), 5, 6 and 10 thereof.

Said union shop agreements are permitted by Section (Eleventh) of the Railway Labor Act (45 USC 15101) notwithstanding any other provision of this Act, or any other statute or law of the United States, or of any State thereof, or of any State."

Said exaction and use of money and said union shop agreements and their enforcement are contrary to the United States Constitution, the law and public policy of this State. Said exactions are contrary to the statutes or laws of other States in which the defendant railroads operate. Said exactions and use of money, said union shop agreements and Section (eleventh) of the Railway Labor Act and their enforcement violate the United States Constitution which guarantees to individuals protection from such unwarranted invasion of their personal and property rights, (including freedom of association, freedom of thought, free speech, freedom of press, freedom to work and political freedom and rights) under the cloak of authority.

(9) Unless enjoined, defendants will continue to be complained of acts above mentioned, the union shop agreements having no termination date, and the injury to plaintiffs will be irreparable.

(10) The labor union defendants, by their collection of funds used for collective bargaining purposes and activities and those used for the complained of purposes and activities set forth above have made it impossible to apportion the amount of dues collected from plaintiffs to the class they represent which are and will be used for collective bargaining purposes from those which are and will be used for the complained of purposes and activities set forth above.

WHEREFORE, it is ORDERED, ADJUDGED and DECREED that:

Defendants, Georgia Southern and Florida Railway Company; Southern Railway Company; Cincinnati, New Orleans and Texas Pacific Railway; Alabama Great Southern Railroad Company; New Orleans and Northeastern Railroad Company; Carolina and Northwestern Railway Company; New Orleans Terminal Company; St. Johns River Terminal Company; Harriman and Northeastern Railroad Company; International Association of Machinists; International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America; International Brotherhood of Blacksmith, Drop Forgers and Helpers; Sheet Metal Workers International Association; International Brotherhood of Electrical Workers; Brotherhood of Railroad Carmen of America; International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers; Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees; Brotherhood of Maintenance of Way Employees; Order of Railroad Telegraphers; Brotherhood of Railroad Signalmen of America; National Organization Masters, Mates and Pilots; National Marine Engineers Beneficial Association; American Train Dispatchers Association; Railroad Yardmasters of America; L. C. Ritter, R. H. Hubbard, Norman Dugger, J. R. Westbrook, John Pelkafer, T. B. Steadman, C. J. Brice, D. C. Bruns, W. G. Roberts, H. H. Dent, J. J. Duffy, B. R. Acuff, T. J. Roberts, Irvin Barney, W. W. Dyke, W. B. Chapman, Anthony Matz, J. H. Desotell, Lewis Craig, George M. Harrison, G. A. Link, J. D. Avera; J. P. Alexander, C. W. Ball, R. K. Lanfair, F. G. Gardner, H. R. Duensing, E. V. Peed, Jesse Clark, E. C. Melton, F. O. Dasher, B. T. Hurst, John M. Bishop, W. L. Ball, William O. Holmes, O. H. Braese, R. M. Crawford, T. W. Grimmatt, M. G. Schoch, H. E. Ivey, T. J. Dame, and Charles J. MacGowan, and all persons, firms or corporations acting in concert with them, be and they hereby are perpetually enjoined from enforcing the

said union shop agreements (copies of which are as exhibits to the petition herein) and from the petitioners, or any member of the class, for refusing to become or remain members of the union, for periodic dues, fees, or assessments to, or for the benefit of, the union defendants, provided, however, that any member of the class may at any time petition the court to dissolve the union upon a showing that they no longer are engaged in the improper and unlawful activities described herein.

In response to the prayers of the plaintiffs, the railroad defendants for declaratory judgment, the court declares Section Two (Eleventh) of the said Act to be unconstitutional to the extent that it authorizes, or is applied to permit, the exaction of funds from the plaintiffs and the class they represent for the compensation and activities set forth above, and it declares the union shop agreements, copies of which are attached to the petition, to be null, void, and of no effect as to the parties, and that the above-described exaction from the said union shop agreements is illegal in the face of the constitution of the plaintiffs, and the class they represent, of the rights and the personal rights guaranteed by the constitution of the United States and the laws and policies of the United States and other States as set forth above. I further declare that plaintiffs are entitled to the return of the periodic dues, fees and assessments which they have been compelled to pay the labor union defendants for the terms of the union shop agreements.

IT IS FURTHER ORDERED AND DECREED THAT

Hazel E. Cobb do have and recover of the Brotherhood of Railway and Steamship Employes, Local No. 1, Handlers, Express and Station Employees, and the members thereof, the sum of . . . \$158.25;

J. H. Davis do have and recover of the Brotherhood of Railway and Steamship Employes, Local No. 1, Handlers, Express and Station Employees, and the members thereof, the sum of . . . \$158.25;

which are attached
from discharging
they represent,
members of, or pay
any of the labor
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THAT:

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Handlers, Express and Station Employees, and the
bers thereof, the sum of . . . \$133.50;

S. B. Street do have and recover of the defendant
Brotherhood of Railway and Steamship Clerks, F.
Handlers, Express and Station Employees, and the
bers thereof, the sum of . . . \$151.50;

This decree and order shall operate as an adjudication
of the basic common rights asserted by plaintiffs in
own behalf and on behalf of other employees of the
defendant railroads similarly situated, and shall not
stitute any adjudication of claims for monetary damages
or for refund of dues, fees or assessments, if any, of
members of such class who have not made an individual
personal appearance in this case.

It is further ordered that the plaintiffs have and recover
of the defendants judgment in the sum of \$210.45,
for the use of the officers of the Court.

This 8th day of December, 1958.

/s/ O. L. LONG
Judge of Superior Court
Macon Judicial Circuit

Proof of Service

I, Milton Kramer, one of the attorneys herein, and a member of the Bar of the State of the United States, hereby certify that on July, 1959, I served copies of the foregoing Statement on the several parties thereto:

1. On the individual appellees, by mail in duly addressed envelope, with airmail postage prepaid, to their attorneys of record, Gambrell, Harlow & Richardson, 825 Citizens & Southern National Building, Atlanta 3, Georgia.

2. On the railroad company appellees, by mail in duly addressed envelopes, with postage prepaid, to their respective attorneys of record, Hall, Groover & Hawkins, 520 First National Building, Macon, Georgia, and Harris, Russell & Persons Building, Macon, Georgia.

.....
MILTON KRAMER

FILE COPY

OFFICE SUPREME COURT U.S.

FILED

FEB 15 1960

JAMES R. BROWNING, Clerk

No. ~~200~~ 4

IN THE
Supreme Court of the United States

OCTOBER TERM, 1959

INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL.,
APPELLANTS,

v.

S. B. STREET, ET AL., APPELLEES

On Appeal from the Supreme Court of Georgia

BRIEF FOR THE APPELLANTS

MILTON KRAMER
LESTER P. SCHOENE

SCHOENE AND KRAMER
1625 K Street, N. W.
Washington 6, D. C.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1959

No. 258

INTERNATIONAL ASSOCIATION OF MACHINISTS,
APPELLANTS,

v.

S. B. STREET, ET AL., APPELLEES

On Appeal from the Supreme Court of Georgia

BRIEF FOR THE APPELLANTS

OPINIONS BELOW

The opinion of the Supreme Court of Georgia in the first appeal, *sub nom.* *Looper v. G. S. & F. L.*, is reported in 213 Ga. 279, 99 S.E. 2d 101; a copy is appended to the Jurisdictional Statement as Appendix A. The opinion of the Supreme Court of Georgia in the second appeal is reported in Ga. , 108 S.E. 2d 101; a copy is appended to the Jurisdictional Statement as Appendix B thereto, and appears in the printed

page 249. A copy of the "Findings, Conclusions, Order, Judgement and Decree" of the Superior Court of Bibb County, Georgia, which was affirmed by the decision appealed from, is not reported, is appended to the Jurisdictional Statement as Appendix C thereto, and appears in the printed Record at page 101.

JURISDICTION

This action was brought in the Superior Court of Bibb County, Georgia, by certain employees of the Southern Railway Company and one of its subsidiaries to enjoin that company and all its subsidiaries (comprising the Southern Railway System) and the appellant labor unions from performing union-shop agreements entered into by the said railroad companies and the said unions pursuant to Section 2, Eleventh of the Railway Labor Act (Act of Jan. 10, 1951, c. 1220, 64 Stat. 1238, U.S.C. tit. 45, sec. 152, Eleventh), and, among other items of relief, to declare said section 2, Eleventh unconstitutional and ineffective to supersede state law. The judgment of the Supreme Court of Georgia was entered May 8, 1959 (R. 270), Notice of Appeal was filed in that Court on June 5, 1959 (R. 271), the Jurisdictional Statement was filed in this Court on July 30, 1959, and probable jurisdiction was noted October 12, 1959 (R. 276).

In the trial court appellants relied on the authority of Section 2, Eleventh of the Railway Labor Act as supporting the validity of the union-shop agreements under attack and the repugnance of state law to the federal law. (R. 62, 77-8, 94-5, 95-6.) The individual appellees prayed for a decree declaring the federal law unconstitutional, and such prayer was granted. R. 83, 106. There was thus "drawn in question the validity of a . . . statute of the United States," as provided in Section 1257(1), title 28, U.S.C. The individual appellees also relied on state law determining the validity of the agreements involved although said law was repugnant to the federal law. R. 78, 79. Thus there was "drawn in question the validity of a

statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity," as provided in section 1257(2).

QUESTIONS PRESENTED

The following questions are presented by this appeal:

1. Whether the Supreme Court of Georgia erred in holding the union-shop amendment to the Railway Labor Act (as amended, sec. 2, Eleventh, Act of Jan. 10, 1951, 64 Stat. 1238, U.S.C. tit. 45, § 152, Eleventh) unconstitutional and invalid.

2. Whether the Supreme Court of Georgia erred in holding that union-shop agreements entered into pursuant to the Railway Labor Act are unconstitutional and invalid.

3. Whether the Supreme Court of Georgia erred in holding Georgia law and the laws of other States valid and applicable to union-shop agreements between a carrier subject to the Railway Labor Act and the duly designated representatives of its employees, despite the acknowledged repugnance of such law so applied to section 2, Eleventh of the Railway Labor Act and its claimed repugnance to the Constitution of the United States by reason of Congressional preemption of the field.

4. Whether the Supreme Court of Georgia erred in affirming a judgment permanently enjoining the performance of union-shop agreements subject to and in compliance with the Railway Labor Act.

5. Whether the Supreme Court of Georgia erred in holding that the use, by a union having a union-shop agreement, of a part of its dues receipts for purposes other than the negotiation and administration of collective bargaining agreements concerning rates of pay, rules and working conditions, or wages, hours, terms or other conditions of employment, violates constitutional rights under the

4
First and Fifth Amendments of employees subject to such union-shop agreement.

6. Whether the Supreme Court of Georgia erred in holding that the decision of this Court in *Railway Employees Dept. v. Hanson*, 351 U.S. 225, is inapplicable where it is found that a union having a union-shop agreement spends part of its funds for political and legislative purposes.

7. Whether the appellants were denied due process of law by the holdings of the Supreme Court of Georgia:

(a) That the procedural rulings of the trial court did not deny appellants a fair opportunity to defend this action.

(b) That a class action may properly be brought on behalf of persons whose membership in the class is determined by ascertaining a combination of mental attitudes of each person.

(c) That the plaintiffs in the trial court had standing to sue unions not the collective bargaining representative of the class in which they are employed, with respect to collective bargaining agreements not affecting the plaintiffs.

(d) Sustaining the same findings of fact with respect to all the union defendants despite the substantial difference in the evidence with respect to the several union defendants.

(e) Sustaining findings of fact not supported by any evidence.

STATUTES INVOLVED

Section 2, Eleventh of the *Railway Labor Act*, as amended by the Act of January 10, 1951, c. 1220, 64 Stat. 1238, U.S.C., Title 45, Sec. 152, Eleventh:

"Eleventh. Notwithstanding any other provision of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State

any carrier or carriers as defined in this Act and a labor organization or labor organization duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—

“(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: *Provided*, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

“(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership: *Provided*, That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner.

“(d) Any provisions in paragraph Fourth and Fifth of section 2 of this Act in conflict herewith are to the extent of such conflict amended.”

Georgia Code, ch. 54-9, sections 54-901 through 54-904:

“54-901 Definitions.—When used in this Chapter—

“(a) The term ‘employer’ includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, any State, or any political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer) or any one acting in the capacity of officer or agent of such labor organization.

“(b) The term ‘employee’ shall include any employee, and shall not be limited to the employee of a particular organization.

“(c) The term ‘employment’ means employment by an employer as defined in this Chapter.

“(d) The term ‘labor organization’ means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

“54-902. Membership in labor organization as a condition of employment.—No individual shall be required as a condition of employment, or of continuance of employment, to be or remain a member or an affiliate of a labor organization, or resign from or to be removed from membership in or affiliation with a labor organization.

“54-903. Payment to labor organization as a condition of employment.—No individual shall be required as a condition of employment, or of continuance of employment, to pay any fee, assessment, or other contribution of money whatsoever, to a labor organization.

“54-904. Contracts requiring membership payments to, labor organizations as contrary to public policy.—Any provision in a contract between an employer and a labor organization which requires as a condition of employment, or of continuance of employment, that any individual become or remain a member or an affiliate of a labor organization, or that any individual pay any fee, assessment, or other

of money whatsoever, to a labor organization, is hereby declared to be contrary to public policy of this State, and any such provision in any such contract heretofore or hereafter made shall be absolutely void."

Constitution of the United States, Article VI, cl. 2:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof;
• • • shall be the supreme law of the Land • • •"

STATEMENT

The Parties

The labor union appellants, who are the real parties in interest as appellants, are standard railway labor organizations which have at all material times been the collective bargaining representatives of their respective crafts or classes of employees of the Southern Railway. R. 169-71. They represent those employees commonly referred to as the "non-operating" employees of the carriers. Apart from some unproven allegations in the complaint as amended, there is nothing in the record to show the identity, relationship, or conduct of any of the individual defendants.

The railroad company appellees are common carriers by railroad subject to the Interstate Commerce Act; as such, they are "carriers" within the meaning of and subject to the Railway Labor Act. R. 198.

At the time of the trial, there were six petitioners or intervening petitioners (now appellees), all employed within the craft or class of clerk,* five by the Southern Railway Company and one by the New Orleans and Northeastern Railroad Company. R. 5, 16, 202-4. Those carriers and seven other carriers were named as defendants and are subject to the final order. R. 1-2, 105. One of the individual appellees is a resident of and employed in Mississippi, one is a resi-

* The record shows that three of the individual appellees are employed in the craft or class of clerks (R. 5, 72-4, 106, 203-4) and does not contain proof of the craft in which the other three are employed; in fact, all six are employed in that craft. See R. 90, 92, 106.

dent of and employed in the District of Columbia remaining four are residents of and employed in R. 71-4. All are represented for purposes of collective bargaining by the Brotherhood of Railway and Airline Clerks, Freight Handlers, Express and Station Employees. They purport to sue on behalf of all employees of the Southern Railway companies represented in collective bargaining by any of the appellant unions, residing in various states in which the Southern operates. The unions were enjoined in the final order entered and are below. R. 105.

The Union-Shop Agreements and the Railway Labor Act

By the Act of January 10, 1951 (set forth at page 10) Congress amended the Railway Labor Act so as not to prohibit all forms of union-security agreements but instead to permit union-shop agreements subject to certain limitations and conditions prescribed by the statute. It was specifically provided that such agreements were to be permitted "Notwithstanding any other provision of this Act, or of any other statute or law of the United States, or of any Territory thereof, or of any State". Thereafter, railroad companies entered into union-shop agreements with the appellant unions in the terms of the 1951 amendment to the Railway Labor Act, complying with all the limitations and incorporating all the limitations required by the statute. The agreements provide that they shall be separate agreements between each carrier and each labor organization. R. 214. The agreements require (subject to certain conditions and limitations not relevant here) that all employees covered by the basic collective bargaining agreement between the carrier and the union, as a condition of continued employment, become members of the union within 60 days after the date of their entering their craft or class within 60 days after the beginning of such employment or after the effective date of the agreement, whichever is later. R. 205-6. However

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condition of employment applies to any employee to whom membership is not available on the same terms and conditions as are generally applicable, nor to any employee who might be denied membership or whose membership might be terminated for any reason other than failure to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership. R. 207-8.

There is no contention that the agreements in any way exceed the authority which the statute, if valid and effective according to its terms, confers. The union-shop agreements involved here, except for the names of the parties, are identical with the union-shop agreement before the 'Court in *Railway Employees' Dept. v. Hanson*, 351 U.S. 225.

Procedural Matters

The individual appellees chose not to comply with this condition upon their continued employment by the Southern. Instead they brought, or intervened in, this action, seeking to enjoin the enforcement of the union-shop agreements, claiming that the agreements violated their rights under the Constitution of the United States and under the so-called "right-to-work" provisions of the statutes of Georgia and the laws of other states. R. 9-13, 78-82.

As finally amended, the petition alleges that the union-shop agreements entered into between the defendant labor organizations and the defendant railroads are illegal, unconstitutional, and void, and in direct violation of the Georgia right to work laws (Code Ann. Supp., Sec. 54-801 through 54-908, Ga. L. 1947, pp. 616-621), Georgia public policy, the laws and public policy of other states served by the defendant railroads, the First, Fifth, Ninth, and Tenth Amendments to the Constitution of the United States, and certain sections of the Constitution of the State of Georgia. R. 78-82. It further alleges that the initiation fees, periodic dues, and assessments which the petitioners would be re-

quired to pay under the union-shop agreement used in substantial part for purposes not germane to collective bargaining but to support ideological doctrines and candidates which they are not willing to support and cannot lawfully be forced to support, the petitioners' constitutionally guaranteed right of association, thought, liberty, and property. R. 78-82. It was further alleged that the amendments, and Section 2, Eleventh of the Railroad Labor Act (45 U.S.C.A. Sec. 152, Eleventh) to the extent that they authorize such union-shop agreements, are unconstitutional under the First, Fifth, Ninth, and Tenth Amendments of the United States. R. 82, 83.

The action was commenced in June, 1958, in the federal court, and remanded in January, 1959. R. 57-8, 219.

Appellants promptly filed a motion to amend the complaint as theretofore amended on the ground that it failed to state a cause of action. R. 219. At the time the motion was filed, the appellees offered further amendments to the petition to add allegations that the assessments which would be required under the union-shop agreement would be used in substantial part for purposes not germane to collective bargaining but to support ideological and political doctrines and candidates which they were not willing to support. R. 59, 219. The court accepted the amendments, treated the motion as directed to the complaint as so amended, and granted the motion and dismissed the complaint on the ground that this Court's decision in *Rail Labor Bd. v. Hanson*, 351 U.S. 225, had adjudicated the constitutional questions of the petitioners adversely to their position. R. 221.

On appeal to the Supreme Court of Georgia, the court reversed the trial court (R. 221) in what are undoubtedly the most intemperate opinions ever issued by a judicial tribunal. 213 Ga. 279, 99 S.E. 2d 1000. The court's Jurisdictional Statement. In essence, a

reements would be germane to collective and political doctrine, thus violating the rights of freedom of property. R. 59, 754. The union-shop agreement under the Railway Labor Act to the extent that it is violative of the provisions of the Constitution.

1953, was removed in January 1957. R. 31.

to dismiss the complaint on the ground that it failed to state a claim. The hearing on that motion was further amended to include the fees, dues, and expenses of the union-shop agreement as part of the damages sought to support the claim of the employees and their candidates which they sought to recover. R. 19. The trial court refused to dismiss the motion, and so treating the petition on the merits. The *Railway Employees* indicated the contrary position. R. 221.

Georgia that Court said that must be one of the duties of an American citizen. 2d 101; Appendix A, after castigating

this Court and the Congress, for perverting the intent of the Founding Fathers, it held that it need follow the Court's ruling in the *Hanson* case only with respect to the precise ruling, and not with respect to any implications except insofar as implications adverse to these appellants might be extracted from certain language in the *Hanson* opinion. The Supreme Court of Georgia was of the opinion that apparently this Court did not appreciate that unions engage in legislative and political activities, and was of the further view that certain language in the *Hanson* opinion could be interpreted to reserve decision on the constitutionality of Section 2, Eleventh of the Railway Labor Act in permitting union-shop agreements by unions that engage in such activities.

After remand to the Superior Court of Bibb County, the appellants were subjected to a host of astonishing and oppressive procedural rulings, described in Appendix A, of which they claimed deprived them of a fair opportunity to defend this case. After ultimate trial proceedings, the Superior Court entered the order attached to the Judicial Statement as Exhibit C (R. 101-7), declaring section 2, Eleventh unconstitutional insofar as it permits the union-shop agreements, enjoining the enforcement of those agreements, and holding the law of Georgia and other states effective and applicable to such agreements despite the declaration in section 2, Eleventh that Congress preempted the field and superseded state law. On appeal to the Supreme Court of Georgia, that Court affirmed the order of the trial court. R. 249, 270.

The Evidence

It is obviously impossible to summarize all the evidence within reasonable bounds. More than 600 exhibits, many of them voluminous, were introduced, and additional material was read into evidence over a period of four days. The type of evidence upon which plaintiffs stated they principally relied is as follows.

The labor organization defendants current dues ranging from \$2 per month to \$50 except that in the case of two of said initiation fee and reinstatement fee is \$25 respectively. R. 171-5.

All the defendant unions are affiliated with the Federation of Labor-Congress of Industrial Unions and pay to it 5¢ per member per month. The unions are active in the activities of that organization and endeavor to persuade legislative bodies to enact or not to enact certain legislation. R. 127, 131, 177. It also has a "Committee on Political Education" (COPE). R. 122, 131. The expenses of that Committee are financed in part by contributions to it by the AFL-CIO and in part by contributions solicited from individuals. R. 122-32, 137. The contributions are kept in an "individual contributions fund" and are used principally for contributions to members in public office. R. 137, 141-2. The preponderance of the funds receiving such contributions are contributed to the same major political party. R. 197. The contributions from the AFL-CIO are deposited into the "Fund" and are expended principally for the dissemination of information concerning political matters; the expenses of publication of political matter; the urging of the support of particular candidates for office; funds to be available for such support, and the individual contributions fund. R. 122-32.

Railway Labor Executives' Association is the chief executive officer of the defendant labor organizations and eight other labor organizations not defendants in this case. R. 179. All the affiliates contribute to the fund.

* The Masters, Mates, and Pilots, which represents the employees of the Southern, and the Marine Engineers' Association, which represents one employee. No other employees is suing.

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\$60 per year, and
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n. R. 178. Included
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basis to the support of the activities of that organiz-
R. 180-1; P. Exh. 430. The purpose of that organiz-
is to "maintain cooperative action and coordinated p-
on all matters of mutual interest and importance to
way labor." P. Exh. 430, p. 1. A principal activity of
organization is "in the field of federal legislation, wh-
attempts to influence legislation in which the Chief E-
tives who are members of Railway Labor Executives'
ciation deem the members of their organizations hav-
interest. R. 179. It also contributes to the "educat-
fund" of Railway Labor's Political League (RLPL)
cussed below. R. 184.

That League is an organization composed of man-
the individuals who are members of Railway Labor E-
tives' Association, and certain other persons who ar-
cials of railway labor organizations not defendants in
action. R. 182. It was organized to encourage ra-
workers to exercise their voting rights and to inform
of the position and records of candidates for public
on problems of railway workers. P. Exh. 431. Like CO
also has an educational fund and a "free" fund; the fo-
is used for the dissemination of information and the
principally for contributions to candidates for feder-
fige. R. 182, 184. Also, as in the case of COPE, the
ponderance of its contributions to candidates for p-
office have been to candidates of the same major po-
party. R. 197. In addition to the contributions from H
into its educational fund, it has received contribution
that fund in substantial amounts from four of the
organization defendants and in insignificant amounts
three other of the labor organization defendants. R.
4. In addition, numerous contributions into that fund
received from local lodges of various of the labor org-
tion defendants. Some voluntary contributions from
viduals also were deposited into said fund. R. 184.

All but two of the labor organization defendants, an

railway labor organizations that are not the owners of a weekly newspaper "Labor" newspaper is devoted primarily to news matters. P. Exhibits 109-49, 168-228. It receives contributions of a dollar to the funds of R. 189. A substantial portion of its space is devoted to legislative matters and, during election periods, it publishes subjects dealing with the election of candidates. R. 189, par. 49. It also, during general elections, publishes special editions in support of candidates for public office; for example, during the 1900 election campaign it published 16 such special editions for distribution in the State or District of Columbia. R. 189, par. 49. Labor derives financial support from subscriptions. R. 189, par. 49. Labor organization defendants, except on the subject of subscriptions, constituting a substantial portion of "Labor's" revenues, for officers and members. R. 189, par. 49. Defendants; the record does not show whether they purchase subscriptions for all their members or whether they purchase subscriptions by individual members. R. 189, par. 49. Which of them purchase subscriptions only. R. 189.

Each of the labor organization defendants publishes a monthly journal. R. 199. Those journals, in addition to other contents, sometimes include suggestions for legislation to RLPL or COPE, as well as suggestions for contributions to other organizations such as the American Heart Fund, etc. See. e.g., P. Exhibits 283, pp. 49, 50; 269, p. 34; 270, p. 33; 283, p. 302, p. 185; 337; Dfts. Exhibits 30, 58, 62, 63. Defendants also report the recommendations of RLPL for federal office. Exhibits 283, p. 9; 284, p. 325; 380, p. 8.

Some local lodges of some of the labor organization defendants engage directly in legislative activity, except in the six States in which there is restriction.

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 ws of railway labor
 It sometimes invites
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 R. 189, par. 47. The
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 s the Red Cross, the
 ts 281, p. 21; 282, p.
 3; 296, p. 3; 298, p. 2;
 62, 65. Some of them
 RLPL on candidates
 34, p. 39; 285, pp. 46:

e labor organization
 ive activities and ex-
 restrictive legislation.

support candidates for public office in the State or local
 of the local union. R. 176-7 (par. 20), 191. The record
 not show whether any of such local lodges are lodge
 which any of the plaintiffs or any member of the purpo
 class they represent would pay any funds pursuant to
 union shop agreements.

The "Findings, Conclusions, Order, Judgment and Decree"

The trial court found this case to be a class action
 found the class to consist of "all non-operating employ
 of the railroad defendants affected by, and opposed to
 hereinafter referred to union shop agreements, who
 are opposed to the collection and use of periodic du
 for challenged purposes. R. 191. The appellants obje
 on the ground, among others, that a "class" in litiga
 cannot consist of persons whose identity is determine
 ascertaining, or trying to ascertain, whether or not
 entertain a combination of mental attitudes. R. 229-30.
 trial court found also that the labor organization def
 ants entered into the union shop agreements "wit
 authority from the employees represented by them".
 230.

The trial court found that the labor organization def
 ants used funds collected from the plaintiffs and the
 ported class "to impose upon plaintiffs and the class
 represent, as well as upon the general public; conform
 to "certain political and economic doctrines, concepts
 ideologies" and conformity to "legislative programs",
 the labor organization defendants excepted on the gro
 that there is nothing in the record to show that any of
 union defendants imposed on anyone conformity to
 doctrines, concepts, ideologies, or legislative program
 233. The trial court found that the union shop agreem
 are contrary to the constitution, law, and public polic
 the State of Georgia and contrary to the statutes or la
 other States in which the defendant railroads operate.

exception was made on the ground that the law and public policy of Georgia specifically does not prohibit such agreements, that the statutes or law of other States were not proven, and that in some States in which the defendant railroads operate the specific union shop agreements here involved have been held to be lawful. R. 234-5. A similar conclusion was made with respect to the union shop agreements violating the federal Constitution; the court held that the union shop agreements and their enforcement invade plaintiffs' personal and property rights, including freedom of speech, freedom of press, freedom of thought, freedom to work, and their political freedom and rights. R. 104, 235.

The trial court found that the injury to the plaintiffs from the complained of conduct would be irreparable but made no such finding with respect to the members of the purported class. R. 104 (par. 9), 236. The union defendants objected on the ground that there was nothing in the record to support a finding of irreparable injury, especially in view of the fact that the greatest amount of damages claimed by any plaintiff for being required to pay initiation fees and dues for a period of five years was \$158.25. R. 236.

The trial court found that the labor organization defendants had so commingled their funds that it was impossible to ascertain what portion of the dues collected by the defendant labor organizations was used for the complained of purposes and activities, and the union defendants excepted on the ground that there was nothing in the record to show what accounts were kept by said defendants or to show whether it would be impossible or difficult to ascertain what amounts they expend for particular purposes. R. 104, 236.

The trial court entered an order and decree perpetually enjoining the defendant railroads, the defendant unions, and the individual defendants from enforcing the union shop agreements and from discharging the petitioners, or

any member of the class they represent, for refusing to become or remain members of, or pay periodic dues, fees, or assessments to, any of the labor union defendants. R. 105-6. The court further found and declared that the plaintiffs were entitled to the return of all periodic dues, fees, and assessments which they had paid to the labor union defendants pursuant to the terms of the union shop agreements and entered judgment against the defendant Brotherhood of Railway and Steamship Clerks in favor of the plaintiff Hazel E. Cobb in the sum of \$158.25; in favor of the plaintiff J. H. Davis in the sum of \$133.50; and in favor of S. B. Street in the sum of \$151.50 for the fees and dues they had paid for a period of over five years. R. 106.

The court further entered a declaratory judgment finding and declaring Section 2, Eleventh of the Railway Labor Act (45 U.S.C. 152, Eleventh) to be unconstitutional to the extent that it permits, or is applied to permit, the exaction of funds from plaintiffs and the class they represent, for the complained of purposes and activities. R. 106.

The court likewise entered a declaratory judgment finding and declaring that the enforcement of the union shop agreements is illegal in that it deprives plaintiffs, and the class they represent, of personal rights guaranteed by the Constitution of the United States and the laws and policy of the State of Georgia and other States. R. 106.

The court also decreed that its order operated "as an adjudication of the basic common rights asserted by plaintiffs on their own behalf and on behalf of other employees of the defendant railroads." R. 107.

The only limitation on the order is a proviso "that said defendants [all the defendants, including the railroads and the individuals] may at any time petition the court to dissolve said injunction upon a showing that they no longer are engaged in the improper and unlawful activities described above." R. 106, 239-40.

SUMMARY OF ARGUMENT

In the absence of a constitutional, statutory, or contractual provision to the contrary, an employer may discharge an employee for any reason, such as the failure of the employee to join a union, and the employer may do so either *sua sponte* or because it has contracted to do so. At common law a union-shop agreement was valid.

The federal constitution imposes no limitations on railroads or unions; it imposes limitations only on the federal and state governments. No contractual provision prevents the termination of plaintiffs' employment for not belonging to a union; the only contractual provisions are to the contrary. The only question therefore is whether there is some statutory or common law principle that prevents the application of the union-shop agreements to plaintiffs.

A union-shop agreement is lawful under Georgia statutory and common law. 160 A.L. R. 918. The only common law cases in Georgia assumed the validity of such agreements. And they must have been valid at common law else there would have been no need for Georgia to enact its so-called "right-to-work" law. But that statute specifically excludes the railroad industry from its substantive provisions. Georgia Code 54-901(a). The Georgia courts have not held to the contrary. The validity of union-shop agreements was never conditioned on the use made of dues secured by conditioning employment on union membership.

The enactment of section 2, Eleventh of the Railway Labor Act was constitutional action by Congress. So far as here pertinent it consisted of but two provisions. First, it repealed the prior federal prohibition of a union shop in the railroad industry, and the validity of such repeal cannot be and is not questioned. Second, it provided that state law should not apply to the subject of the type of union-security agreements that Congress had theretofore prohibited and thereafter ceased to prohibit. Plaintiffs argue that Congress unconstitutionally superseded state law be-

cause but for such superseding they would be protected by state right to work laws against being required to pay union dues a part of which gets spent for certain purposes. They concede that the Georgia right-to-work law excepts the railroad industry, but argue that such laws in other states have no such exception, that Congress could not validly supersede such other laws, and the union-shop agreement could not be invalid in some states and valid in others—without explaining why this is so.

We submit it is clear that Congress may validly supersede state law on any subject on which Congress may legislate, and it may legislate on union-shop agreements in the railroad industry. The only issue heretofore raised in such situation is whether Congress intended to supersede, not whether it could supersede state law where it could legislate. Here there is no question of intention; Congress expressly said it intended to supersede. In such situation it is the Supremacy Clause that ousts the state law, and that Clause cannot be unconstitutional.

Section 2, Eleventh intentionally imposes no limitation on the purposes for which dues collected under a union-shop agreement may be spent. Efforts to insert such limitations were unsuccessful. And all courts have agreed that such was the intention.

In *Ry. Employees Dept. v. Hanson*, 351 U.S. 225, this Court reversed the Supreme Court of Nebraska for holding section 2, Eleventh unconstitutional because it permitted union-shop agreements under which dues could be required part of which was used for purposes other than collective bargaining. All the basic facts in this case were present in the *Hanson* case, and the same arguments were made. There is no contention in this case that plaintiffs are required by the union-shop agreements to do anything other than pay uniform dues and fees to be in compliance. And even apart from the *Hanson* case, an employee has no constitutional right to work for a specific employer without

having his dues used in part for political or legislative purposes with which he disagrees. The fact that unions engage in such activities does not require that all who contribute to its funds agree with the union objectives. The numerous cases sustaining the validity of state requirements of integrated bar are typical of this proposition.

Furthermore, legislative and political activities are germane to collective bargaining. Especially in the railroad industry, many of the most vital conditions and benefits of employment are determined by legislation or strongly influenced by legislative and political results. The details of this are extensive.

The holdings below deprived appellants of due process in several respects. Apart from the procedural matters discussed in Appendix A, many of the findings on which the judgment rests have nothing whatever in the record to support them. Other findings are the result only of random speculation, and still others are applied to all the defendant unions although the record explicitly shows that they can be true only of some few of them, in many cases an unspecified few. Such findings are not the result of true judicial process. Further, by making the judgment operative wherever the Southern operates, the judgment below overrules in effect the decisions of the courts of other states which have held these very union-shop agreements valid in their jurisdictions. The courts of Georgia have no such authority.

Another deprivation of due process was entering the judgment in favor of an amorphous "class" the composition of which cannot be determined without reading their minds and thus subjecting appellants to contempt for conduct which they could not have known would violate the injunction which they engaged in it. The sustaining of a class action further denied appellants due process by subjecting all but one of them to suit by persons who had no standing to sue them, that is, by persons not affected by anything any but on which the appellants has done or might do.

ARGUMENT

I. INTRODUCTION

Before directing our attention to the merits of this case, it may be profitable to review certain basic legal principles in the light of which the more important issues in this case, and their proper resolution, stand out more clearly.

At common law, in the absence of constitutional or statutory or contractual provisions, an employer may terminate the employment of his employee for any reason or for no reason, no matter how reasonable, unreasonable, or whimsical. Thus, in the absence of a constitutional or statutory or contractual provision, an employer, even a railroad employer, may terminate the employment of an employee because the employee belongs to a union or because he does not belong to a union or for any other reason. Since an employer under such conditions is thus free to impose any condition of employment he sees fit, he may impose any condition because he has agreed with someone else that he would do so. The basic question thus gets reduced to a consideration of whether there is any constitutional or statutory or contractual provision which limits the right of any of the railroad company defendants to terminate the employment of any of the plaintiffs or anyone else in their employ.

Certainly there is nothing in the federal Constitution which limits the right of a railroad to terminate the employment of any of its employees for any reason. Apart from certain procedural or adjective provisions, such as qualification to hold the office of President or Congressman, etc., the Constitution consists of a grant of certain powers to the federal government and restrictions on conduct of the federal or State governments. Nothing in the Constitution limits what conduct may be engaged in by a railroad, such as terminating the employment of an employee for such reason as is sufficient to the railroad.

Nor may any contractual provision be pointed out as infringing the right of any of the railroad defendants to terminate the employment of any of its employees for cause not belonging to a union. On the contrary, the only contractual provision relevant to any such question requires a railroad to terminate employment for such reason.

We thus come to a consideration of statutory or common law principles that may limit the right of a railroad to terminate employment for non-membership in a union, and whether such condition of employment is imposed by a railroad *sua sponte* or because it has agreed to impose such condition of employment.

II. A UNION SHOP AGREEMENT IS A LAWFUL AGREEMENT UNDER COMMON LAW AND GEORGIA STATUTES

In 1947 Georgia enacted its so-called "right-to-work" law. Georgia Code, Chapter 54-9. That statute prohibits employers from imposing as a condition of employment continued employment membership or non-membership in a labor organization.

But the Georgia Right-to-Work Law specifically exempts the interstate railroad industry from its provisions. Code 54-901 provides:

"Definitions.—When used in this Chapter—

(a) the term 'employer' . . . shall not include any person subject to the Railway Labor Act, as amended from time to time . . ."

All the railroads here are subject to the Railway Labor Act (45 U.S.C. 151, *et seq.*). R. 198. Therefore no relief sought in this suit can properly be or is precluded by any provisions of the Georgia Right-to-Work Law. The Georgia statute not only expressly excludes the railroads from its provisions but in effect declares the policy of the State of Georgia to refrain from applying state law to the subject of contracts making employment rights in

way industry conditional upon union membership and to leave such matters to federal law. The exemption from the Right-to-Work Law of railroads covered by the Railway Labor Act, as amended from time to time, expresses the policy of the State of Georgia that the necessity of uniformity of law governing union security issues on the railroads outweighed any state policy with regard to union security. Apparently the Georgia legislature recognized that the harmful consequences of trying to apply forty-eight different state laws to railroads and airlines were greater than any allegedly undesirable aspects of union shop agreements.

The courts below made no reference to the Georgia Right-to-Work law. Nor did they indicate in any respect what Georgia law or policy they were referring to when they found that the practices here involved violated Georgia law.

While it is apparent that the only fair construction of the exemption from the Georgia Right-to-Work Law of carriers subject to the Railway Labor Act, is that Georgia recognized the need for uniformity throughout the country rather than a patchwork of varying state laws, if the exemption is regarded as leaving state common law applicable, the same result follows in this case since union shop agreements were valid in Georgia at common law. For Georgia cases involving union shop or closed shop contracts, in which the court treated the contract as valid without any point even being made that these provisions were in any respect subject to question, see *Savage v. Western Union Telegraph Co.*, 1945, 198 Ga. 728, 735-736, 32 S. E. 2d 785, 789-790; *Jones v. Hearst Consolidated Publications*, 1940, 190 Ga. 762, 10 S. E. 2d 761. Compare *Rainwater v. Trimble*, 1950, 207 Ga. 306, 61 S. E. 420.

Indeed the fact that Georgia found it necessary to enact a Right-to-Work Law, especially since it made it applicable to contracts theretofore entered into (Ga. Code Sec. 54-

904), constitutes a recognition that union shops were valid at common law in Georgia.

There can be no question that at common law, more recently, union-shop and closed-shop agreements were valid. *Hudson v. Atlantic Coast Line R. Co.*, 375 U.S. 657, 89 S. E. 2d 441, 446; 31 Am. Jur. 876; Restatement of the Law of Torts, vol. I, § 402, A.L.R. 918, 919; 172 A.L.R. 1351, esp. at 1352.

The courts which sustained the validity of union-shop and union shop agreements at common law made no distinction with regard to the purpose for which the union used the money collected from employees in violation of a union shop agreement. Indeed, the legal principle which sustained the validity of the union shop agreement at common law precluded any restriction on the use of the money collected. As the Supreme Court of North Carolina held in *Hudson v. A.C.L. R.R. Co.*, (1955) 242 S.E. 2d at 453:

“Beyond question, the right to work is guaranteed to every person. But employment of one person by another is not so guaranteed. In the absence of legislation, an employee's right to work is subject to the terms of his employment contract. The law provided that the employee might be employed for any reason or none . . .”

Since the employer at common law could not impose any condition of employment which would discriminate against the union, so the employer and the union at common law could by joint agreement fix any condition of employment. *Williams v. Quill*, 1938, 277 N.Y. 1, 9, 550, appeal dismissed, 303 U.S. 621; *Rownson v. Guernsey Breeders' Co-op*, 1947, 194 Misc. 7, 272, 274. Cf. *Parker v. T. Smith & Son, Ct.*, 70 So. 2d 893, 896; *Greenwald v. Chiarella*, 194, Div. 213, 63 N.Y.S. 2d 49; *Ensley v. Assoc.*, 1943, 304 Mich. 522, 8 N.W. 2d 161, 163-164.

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Co., 242 N. C. 650.

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IV, sec. 788; 160

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Lownd v. N. Y. State

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ella, 1946, 271 App.

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164. The imposition

of closed or union shop conditions hence was valid
spective of the use made of the moneys secured by
tioning employment on union membership. Whether
moneys were used for legislative or political purpose
immaterial. (See cases discussed, *infra*, Point III, C)

III. SECTION 2, ELEVENTH DOES NOT VIOLATE THE CONSTITUTION BY PERMITTING UNION SHOP AGREEMENTS UNDER WHICH DUES MAY BE USED FOR LEGISLATIVE OR POLITICAL PURPOSES OPPOSED BY SOME WHO PAY DUES.

In 1934, in the Railway Labor Act, Congress imposed a restriction on the common law right of an interstate railroad to terminate the employment of its employees for any reason it saw fit. In that Act, Congress left such railroad free to impose such conditions of employment as they fit or might agree to in collective bargaining with collective bargaining representatives except that among its limitations it forbade the termination of employment because an employee belonged or did not belong to a labor organization. Railway Labor Act, Section 2, Fourth, Fifth; 45 U.S.C. Sec. 152, Fourth, Fifth. In 1951 Congress reconsidered that limitation and repealed it in substantial part. By the amendment of the Railway Labor Act adding subsection Eleventh to Section 2, Congress provided that it no longer prohibited certain types of union shop agreements; closed shop agreements, or union shop agreements not within that description, continued to be prohibited. As far as federal law of itself is concerned, that is all Congress did. It repealed its prohibition of the union shop agreement here involved. The argument that such repeal of Congress is unconstitutional necessarily comes down to an argument that the individual appellees have a constitutional right to have Congress continue to prohibit the union shop agreement here involved. Obviously, no one has a constitutional right to have Congress prohibit something.

The fact that Section 2, Eleventh, in repealing in part the federal prohibition of union shop agreements, does not limit the purposes for which unions may spend funds

to it by employees pursuant to a union s
does not render that provision unconstitut

**A. Section 2, Eleventh Intentionally Imposes no
Purposes for Which a Union May Expend Fe
lected Pursuant to a Union Shop Agreement**

The court below made no express constr
2, Eleventh of the Railway Labor Act as a
shop agreements even though fees and du
political or legislative purposes. Howev
struction was implicit in the court's holding
Eleventh of the Railway Labor Act was to
constitutional. The construction that Sect
of the Railway Labor Act places no limit
uses which may be made of dues and fees
union shop agreements is in accord with
intent.

First, it should be observed that this w
tion of the Railway Labor Act which was
the Supreme Court of Nebraska and by th
Hanson case (351 U.S. 225, 160 Neb. 669
assumed that the Railway Labor Act, a
shop agreements although fees and dues w
for legislative and political purposes. It w
that the Supreme Court of Nebraska, like
here, decided that Section 2, Eleventh of t
bor Act was unconstitutional, and this C
the case and reversed upon the assumption
correct interpretation of the statute (see
B.).

The statute authorizes carriers and labo
to make union shop agreements with the c
membership shall not be conditioned on a
payment of dues, fees, and assessments.
language reads (U.S. Code, Title 45
Eleventh):

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or of any other statute or law of the U

shop agreement,
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Section 2, Eleventh
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45, Section 152.

visions of this Act.
e United States...

or of any State, any carrier . . . and a labor orga-
tion . . . shall be permitted—

“(a) to make agreements, requiring as a con-
dition of continued employment that . . . all employees
become members of the labor organization . . .
vided, that no such agreement shall require such
dition of employment with respect to employee
whom membership is not available upon the
terms and conditions as are generally applicab
any other member or with respect to employee
whom membership was denied or terminated for
reason other than the failure of the employee to te
the periodic dues, initiation fees, and assessm
(not including fines and penalties) uniformly requ
as a condition of acquiring or retaining membersh

There is no condition or limitation based upon the us
which the labor organization puts the fees, dues, and
assessments. Congress, when it was holding hearings on
debating the Union Shop Amendment to the Railway
bor Act, repeatedly had urged upon it the argument
it was unfair to require an employee as a condition
employment to pay dues and fees which are used for
political, legislative, or insurance arrangements with w
the employee is in disagreement. Thus, in opposing
adoption of the Union Shop Amendment to the Rail
Labor Act, Mr. Daniel P. Loomis, then Chairman of
Association of Western Railways, testified before the
ate Subcommittee on Labor and Public Welfare as fol
(Hearings on S. 3295, 81st Cong. 2d Sess., on May 23,
pp. 316-317):

“Without any limitation upon the right of the
ganizations to levy dues, fees, or assessments . . .

“Such funds as were thus raised could be used
discriminately by the organizations and in many
solely at the discretion of the officers of the orga-
nizations. We have seen recent instances where f
from one organization have been tendered to ano
organization for the alleged benefit of some gen-
purpose or for political purposes.”

Similarly see the following colloquy Thomas, Chairman of the Senate Committee on Hearings, and Mr. Jacob Aronson, Vice President of the New York Central Railroad Company (ibid. pp. 173-174):

"... there is the further consideration that the proposal does not even limit the number of dues, fees, and assessments that may be levied by the particular union.

The Chairman: Would you like to see the Government enact a law that says that no union should have neither funeral dues nor dues for such dues? ...

The Chairman: That is the way to do it, but would you like to have us legislate a limitation of fees and rules?

Mr. Aronson: You mean, if you prohibit funeral shop?

The Chairman: Yes.

Mr. Aronson: I say, if you prohibit funeral shop it would seem to me there would be no regulations.

The Chairman: For example, would you like us to get into the field where we say that no union must never give pensions, to corporations no pension bigger than 1 percent of their earnings, like that? ...

The Chairman: But there is an amendment that the General Government is going to say that no union must not have funeral dues, or they must not have profits, or they must not have any of these little dues that they take up for general expenses, something of that nature."

Congressman Hoffman, in opposing the proposed Amendment to the Railway Labor Act discussed on the floor of Congress, used as one of the facts the fact that this amendment would be used to increase dues, and assessments for political purposes. Rec. 17049-17050.

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ibid., May 15, 1950.

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used to collect fees
purposes. 96 Cong.

In view of the foregoing, it is plain that Congress
aware of the arguments with respect to use of fees
dues collected through union shop agreements and
erately refrained from imposing any restriction on the
of such funds for purposes to which an employee
be opposed. To the extent that the use of union funds
building up "war chests" for political candidates, p
the same problem as the donations by business corp
tions to political campaigns, Congress had already
with this problem in the Taft-Hartley Act by amen
the Federal Corrupt Practices Act to apply equally
unions (U. S. Code, Title 18, Section 610).

During the hearings preceding the enactment of
Taft-Hartley Act, Congress took extensive testimony
ting forth the alleged abuses of the closed shop and
union shop to coerce employees to furnish funds
political purposes to which they were hostile. Cecil
DeMille, whose litigation over his alleged constitution
right not to have to choose between his job and paying
assessment to fight the Right-to-Work laws, is set f
below, testified at length in opposition to permitting un
to make employment conditional on union membership
to use dues, fees, and assessments for political purpo
(Hearings, Senate Committee on Labor and Public W
fare, on S. 55, 80th Cong., 1st Sess., February 14, 1947,
796-819, 2059; Hearings, House Committee on Educa
and Labor, on Amendments to National Labor Relat
Act, 80th Cong., 1st Sess., February 21, 1947, pp. 1
1187.) And the Senators and witnesses made repe
references to the *DeMille* case (Hearings, Senate Com
tee on Labor and Public Welfare, on S. 55, 80th Cong.
Sess., pp. 1004, 1452, 2059; Hearings, House Committe
Education and Labor, on Amendments to the Nati
Labor Relations Act, 80th Cong., 1st Sess., pp. 1624-1
93 Cong. Rec. 4135) and argued for and against the
dom to use a union shop agreement to secure political
tributions (Hearings, Senate, Committee on Labor
Public Welfare, on S. 55, 80th Cong., 1st Sess., pp.

1455-1456, 1687, 2065, 2146, 2150, 2401; Hearings, House Committee on Education and Labor, on H. R. 8, etc., 80th Cong., 1st Sess., pp. 64, 350; 1326, 2260, 3015, 3057, 3650, 3701, 3806; 93 Cong. Rec. 3642, 3669, 4885, 4887, 4888, 4889, 5110, 6436, 6437, 6440, 6523, 7488, 7492). During these debates on the floors of Congress the special election editions of Labor were discussed in exactly the context here involved; namely, as a use of funds of employees to support a political candidate which some of those employees might not desire to support (93 Cong. Rec. 6436). Likewise, the role of organizations such as Railway Labor Executives' Association, and the CIO's PAC, which was a precursor of COPE, was similarly debated (93 Cong. Rec. 6436-6438, 6440, 6523).

The Federal Corrupt Practices Act applies only to federal elections. But in a few states there exist similar acts which bar labor organizations from making financial contributions to campaigns. See, for example, Burns Indiana Stat. Ann. Sec. 29.5712; New Hampshire Laws, Ch. 273, 1957 Supp., Chap. 70.2; Purdon's Pennsylvania Stat. Ann. Title 25, Sec. 3543; Vernon's Texas Civil Statutes, Art. 5154a, Sec. 4b, held constitutional in *Federation of Labor v. Mann*, 1945, Tex. Civ. App., 188 S.W. 276; Wisconsin Stat. Ann., 1957, Sec. 346.12.56.

There is, of course, here no evidence and no contention that the defendant unions contributed money to federal political campaigns in violation of the Federal Corrupt Practices Act. Such contention was expressly disavowed. R. 232. Georgia has not seen fit to adopt such an act. Plaintiffs are in effect seeking to have the courts enact for all states such a statute by judicial fiat. And they seek to accomplish this result not by direct judicial legislation but by the compulsion of enjoining a union shop agreement unless the union having such agreement acts in compliance with such non-existent political legislation.

Since the present case has been pending an effort has been made in Congress to secure enactment of legislation giving the plaintiffs the relief they have sought in this case.

In rejecting such legislation Congress made it plain that it was opposed as a matter of policy to enabling employees to interfere with the unions in the use of fees, dues, and assessments for any lawful purpose for which the unions may expend its funds. We believe the views expressed in Congress in rejecting the proposed legislation are additionally persuasive that Congress intended no such restriction. *United Mine Workers v. Ark Oak Flooring Co.*, 351 U.S. 62, 75.

On June 16, 1958, the Senate rejected by a vote of 51 to 30 (104 Cong. Rec. 11347) a proposed amendment to pending labor legislation, which read as follows (104 Cong. Rec. 11330):

"Sec. 503. (a) Any member of a labor organization whose employment is conditioned upon such membership may file a petition with the Secretary requesting that moneys paid as membership dues or fees to such labor organization be expended exclusively for collective bargaining purposes or purposes related thereto. . . .

"(b) When the Secretary shall have determined that such moneys have been so expended, he shall bring in behalf of such petitioner a civil action in any court of competent jurisdiction against such labor organization for the recovery of all the moneys paid by the petitioner to such labor organization during the life of such agreement and for such other appropriate and injunctive relief as the court deems just and proper. Any amount so recovered shall be paid to the petitioner on whose behalf such action was brought and in whose favor judgment was rendered."

In introducing this amendment Senator Potter adverted to the case of *Allen v. Southern Railway Company*, 249 N.C. 491, 107 S.E. 2d 125, then recently decided in the trial court in North Carolina, by name, and gave a long and full description of the proceedings in that case (104 Cong. Rec. 11274-5). Senator Potter, among other things, stated:

"... it seems to me most unfair that when an employee is compelled to join a union in order to continue his employment or to obtain employment, he must pay not only his share of the cost of the union's bargaining processes, but also is compelled to support many other principles, policies, programs and activities to which he may not subscribe, or to which he may be strenuously opposed. . . .

"I think that point was recently brought out in a jury verdict in a North Carolina State court case. . . .

The statements made by the opponents of the bill show they regarded existing legislation as having sufficiently taken care of any problem of use of union funds for political purposes, and that as to the other uses of union funds they believed the will of the majority of the union members should prevail. For instance, Senator Revercomb stated (104 Cong. Rec. 11343):

"The pending amendment, as I understand, is directed at preventing the use of the funds of a labor union for political purposes or for the advancement of any political party. That is a very laudable purpose.

"But in considering the amendment, I raise this question: What would be the effect of the very limited language of the amendment, namely, that the funds shall not be used except 'for collective bargaining purposes or purposes related thereto'? Would such language prevent a labor organization from maintaining a hospital or from using some of its funds for the relief of the sick members?

"Therefore, Mr. President, I have the feeling that the amendment is too limited; that if the amendment were adopted, it would create a bad situation and would work ill effects; that it would not permit a union as an organization to care for its sick members or to maintain hospitals—as we know some unions do."

And Senator Morse stated (104 Cong. Rec. 11338-9):

"This amendment would seek to give encouragement to members of unions who are opposed to majority rule—for instance, if the majority of the union happen to differ from one member on the question of the expenditure of certain funds which the union has authority to spend.

"Are we going to vote that the Secretary of Labor shall have the legislative function of determining what, in his judgment, is for collective bargaining or purposes related thereto?

"What purposes are related to collective bargaining, Mr. President? For instance, consider the public-relations work of a union, to say nothing of the fraternal work that is done by a union among its members. After all, the union shop contract is a legal contract between employers and representatives of the union, in carrying out their constitutional right of freedom of contract in this country. Thus they have entered into a perfectly legal contract.

"Let us consider the public-relations work of a union in a community. Are we to say that a union which participates in civic activities, a union which can always be counted upon in the county or in the community to be of help in every charity drive and every civic program in the community, is not helping its collective-bargaining position and is not doing something directly in relation to purposes connected with collective bargaining?

"Mr. President, I once was the president of the Rotary Club in my hometown. I wish to say that we conducted what we thought were some great civic-betterment programs; and I know the effect on that business community of a union with a social conscience. I know the attitude of that group of business leaders in my home community regarding a union which could be counted upon to support great civic enterprises.

"Mr. President, let me make perfectly clear that under the Taft-Hartley Act, no union can contribute

to a Federal candidate's campaign fund. That would be unlawful. But in this country have we reached a point where a group of men and women who have joined together in a fraternal organization known as a trade union, and who know that a single session of a city council or a State Legislature or of the Congress of the United States can wipe away a great many of the rights which over the years they have earned the hard way in the field of labor relations, can take any interest in political affairs? Have we reached the point, for example, where a union can conduct a program . . . in support of a widened wage, for example, of a fair labor standard act which many unions favor?

• • • • •
 "How absurd can we be if in one breath we say we are for democracy in unions, and then vote for something that takes away from union members democratic control?"

• Yet if the position of the plaintiffs, and the holding of the Court below, are sound, then all that discussion is wasted; if such position is sound, the efforts to obtain restrictions were superfluous and the rejection of such proposals futile, for under that view the complained-of activities would render a union shop agreement, and any legislation permitting such agreement, unconstitutional. Not in the course of any such legislative activities was such argument even suggested. And if plaintiffs' argument is sound that union expenditures for legislative and political activities render union shop agreements unconstitutional, then all the effort and controversy and election battles over state right-to-work laws have been and are wasted and futile; since unions do engage in those activities, laws to make union shop agreements illegal are superfluous because they would be unconstitutional anyway.

B. This Court has expressly held Section 2, Eleventh Not Unconstitutional in Permitting Union Shop Agreements Under Which Dues Are Used for Legislative and Political Purposes to Which Some of the employees Are Opposed.

The Supreme Court of Nebraska in *Hanson v. Union Pac. R.R. Co.*, 1955, 160 Neb. 669, 71 N.W. 2d 526, held that Section 2, Eleventh of the Railway Labor Act was unconstitutional under the First and Fifth Amendments to the Constitution of the United States because it left unions free to use fees and dues collected under union shop agreements for political and legislative purposes to which employees subject to the agreements were opposed. This Court reversed that decision. *Ry. Employees' Dept. v. Hanson*, 351 U. S. 225. Since none of the findings of the trial court and none of the evidence differed in any material respect from the findings and evidence in the Nebraska case, we respectfully urge that the decision of this Court in the *Hanson* case is dispositive here and requires a reversal of the decision below.

An examination of the decision of the Supreme Court of Nebraska in the *Hanson* case shows that its basis of decision was in all respects the same as that of the court below. The Supreme Court of Nebraska stated (160 Neb. at 697, 71 N.W. 2d at 546):

"We think Congress was without authority to impose upon employees of railroads in Nebraska, contrary to our Constitution and statutory provisions, the requirement that they must become members of a union representing their craft or class as a condition for their continued employment. It improperly burdens their right to work and infringes upon their freedoms. This is particularly true as to the latter because it is apparent that *some of these labor organizations advocate political ideas, support political candidates and advance national economic concepts which may or may not be of an employee's choice.*" (Italics supplied)

Again the Supreme Court of Nebraska stated (at 698-700, 71 N.W. 2d at 547):

"For the sake of discussion let us assume the right to require employees in interstate commerce to become members of a union falls under the power of Congress to regulate interstate commerce rather than under the freedoms guaranteed by the First and Fifth Amendments. It is apparent that the purpose of the amendment was to get rid of free-riders. A free-rider is an employee who receives the benefits of collective bargaining but does not bear any of the costs thereof because he does not belong to the union which negotiated and secured such benefits. Assuming it would be reasonable to require free-riders to pay their proportionate share of the cost of collective bargaining carried on on their behalf by labor organizations, we do not think the means selected has any real and substantial relation to the object sought to be obtained . . . by requiring him to pay initiation fees, dues and assessments he is required to pay for many things other than the cost of collective bargaining . . .

"... assuming it would be reasonable for it to require all employees receiving benefits from collective bargaining agreements to contribute their proportionate share of the cost thereof, a question not before us, one which we do not decide, we are, nevertheless, of the opinion that it cannot be done in a manner in which it was here attempted. *To require employees receiving benefits from collective bargaining agreements to pay the labor organizations the cost of their initiation fees, dues, and assessments, or to require them to make contributions to any and all varied objects and undertakings in which such organizations are or may become engaged and which have no substantial relation to the object he is seeking to be obtained.*" (Italics supplied)

Thus the Supreme Court of Nebraska made the same findings and holding as below, and for the same reasons. And it did so upon the same type of evidence.

The record in the *Hanson* case showed that union dues were used to pay for subscriptions to Labor (record in Supreme Court, No. 451, October Term, 1955, p. 143, Exh. 10), that Labor issued special election editions urging support of given candidates for public office (*idem.*), and that union dues were otherwise used for political purposes (*ibid.*, pp. 254-256, Ex. 31). There, the record showed that the unions maintained legislative representatives on both the state and national levels whose salaries and expenses incurred in lobbying were paid out of union dues (*id.*, pp. 125, 126, 135, 136, 144, Exs. 7, 9, 10).

The briefs filed by Robert L. Hanson, *et al.* in this Court in *Ry. Employees' Dept. v. Hanson*, 351 U. S. 225, made all the contentions which the plaintiffs here urged upon the court below. In the main brief of Robert L. Hanson, the Statement of the Case contained the following headings, among others:

"(c) The requirement of paying dues to support political activities of the unions." (p. 16)

"(aa) For political and economic propaganda." (p. 16)

"(bb) For the salaries and expenses of lobbyists." (p. 17)

"(cc) To elect candidates for public office." (p. 17)

The same brief under the argument contained the following points among others:

"II. Plaintiffs are deprived of their liberty and property." (p. 58)

"B. Plaintiffs are deprived of their property in the form of money." (p. 67)

"2. The Railway Labor Act provides no restrictions as to the purposes for which the money thus collected may be spent." (p. 67)

"(a) Political activities of the unions are paid for by money from dues, fees and assessments." (p. 68)

The brief describes the manner in which publication "Labor" issues special edition report for specific political candidates (p. 63) how each railway union has its own special addition to Labor (p. 17). It describes through radio programs and other contributions and expenditures which unions or their affiliates make for political office (pp. 16-17, 68-71).

From the foregoing it is evident that the *Hanson* case had before it for decision the issue decided by the court below. This Court reached the same conclusion had this issue before it, for it described the case as presented to the State Supreme Court as follows (351 U. S. at 100):

"The Supreme Court of Nebraska held that a union shop agreement violates the Fifth Amendment in that it deprives the employees of the right of free association and violates the Fifth Amendment in that it requires the members to pay for membership dues besides the cost of collective bargaining."

And with that record before it, and with the holding below, this Court in the *Hanson* case upheld the enforcement of a union shop agreement similar to the one here involved, although it was for the purposes for which a union could spend its fees, dues, and assessments collected under the agreement. The Court said (351 U. S. at 100):

"The only conditions to union membership imposed by Section 2, Eleventh of the Railway Labor Act are the payment of 'periodic dues, initiation fees, and assessments.' The assessments that are imposed do not include 'fines and penalties for non-financial support required relates, the work of the union in the realm of collective bargaining. No more precise allocation of the cost of the work to individual members seems to us to be required."

The holding of this Court that no allocation of the actual use of initiation fees and dues need be made to individual members seems to us to be correct.

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"relates" "to the work of the union in the realm
lective bargaining" is made doubly clear by its st-
that the holding does not necessarily apply to "in-
ments" levied to support a particular activity. The
Court states (351 U. S. at 235):

"If 'assessments' are in fact imposed for pur-
not germane to collective bargaining, a different
blem would be presented."

In the instant case no issue with respect to assess-
is presented. There was no evidence that any of
defendant unions has collected any assessments for a
poses which the plaintiffs found objectionable. cf.
& Lomb, 1954, 108 N.L.R.B. 1555, where the N-
Labor Relations Board held that a union in setting
optical business had departed from the realm of co-
bargaining. Thus an assessment specifically to raise
for such a purpose might raise an issue not pas-
the *Hanson* case, but we have no such issue here.

Although the trial court made a finding in the
case that the fees and dues collected by the de-
unions under their union shop agreements with the
ant carriers have "been and are being used in sub-
amounts to impose upon plaintiffs and the class th-
resent, as well as upon the general public, conform-
those doctrines, concepts, ideologies and program-
posed by plaintiffs and the class they represent (cf.
par. 6), there is no basis, none whatever, in the reco-
for such a finding.* There was nothing in the stip-
or exhibits here which afforded the slightest basis
finding. Rather the evidence here was in all re-
spect to the same as that which this Court regarded
"forcing ideological conformity" (351 U. S. at 23-
deed the reference in the finding below to the im-
upon the general public of conformity to those do-

* See further discussion on this below, Point VIII.

concepts, ideologies, and programs, demonstrating that the exercise of freedom of speech and the viewpoint of the union was a form of conformity. Obviously using funds to pay for or publications does not impose conformity of the employees, equally with each member generally, free to make up his own mind, listen or read or not to listen or read. In *A. Ry. Co.*, 249 N. C. 491, 107 S.E. 2d 125 (1954) (advisement on reconsideration), the Supreme Court of North Carolina said:

"All that defendant unions demand that they pay the ordinary periodic dues and fees uniformly required of all members in such respects, plaintiffs are free to speak and act according to their own desires even if by so doing they may act at cross-purposes with defendant unions."

Indeed, if any condition other than the payment of "ordinary periodic dues and initiation fees" is imposed upon any employee, then under the union shop agreement itself the agreement is not applied to such employee. Nothing in this is within the reservation of judgment by the court on the issues presented if dues, fees, or assessments are used as a cover for forcing ideological conformity.

Finally, this Court carefully included "financial support of the collective bargaining unit by all who receive the benefits of its work" (3) (Italics added.) Support of the union, by the bargaining agency, rather than financing solely by the union, is what the Court sustained. The benefits envisioned the employees as enjoying the "work" of the union, not merely its collection of dues.

In the *Allen* case, the Supreme Court of North Carolina said:

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t of North Carolina

"This sentence appears in the second quotati
more precise allocation of union overhead to i
ual members seems to us to be necessary.' V
not dispel the impression that the meaning
sentence is that the requirement that unwilling
bers pay ordinary periodic dues and fees for th
port of their collective bargaining agency is a
able requirement and that no more precise allo
need be made."

But more compelling than any language used l
Court is the fact that it unanimously reversed a st
preme court for doing just what the Georgia Cou
namely, enjoining enforcement of a union shop agr
because part of the fees and dues is used for po
legislative, charitable, and welfare purposes of whic
employees may not approve.

The Supreme Court of Nebraska itself has so cor
the holding in the *Hanson* case. On remand of the
from this Court the plaintiffs there filed a motion for
fication of the injunction, rather than its dissolut
as to prohibit only the enforcement of the union
agreement insofar as it required the payment of mo
be spent for purposes unrelated to collective barg
They contended that such was the meaning of the
opinion. The Supreme Court of Nebraska asked
filing of briefs and heard full argument, and th
parently considered the motion unworthy of disc
for it denied it in a *per curiam* order without opinio

Similarly, in *Moore v. C. & O. R. Co.*, 198 Va.
S.E. 2d 140 (1956), the Court initially affirmed t
missal of the action by the trial court. Subsequen
Court denied a petition for rehearing which was ba
the same arguments as made to this Court on petit
rehearing in the *Hanson* case, including the use of
funds derived from dues for political purposes.

Likewise, in *Sandsberry v. Intl. Assn. of Machin*

* Not reported. Supreme Court of Nebraska, General No

S.W. 2d 412, cert. den. 353 U. S. 918 (To it was argued, that this Court's decision in this case did not govern a situation where the unions spent a portion of their funds for legislative purposes. The Supreme Court concluded that such facts were before the Court and rejected the contention, holding the *Hanson* case controlling.

The Supreme Court of North Carolina reached the same conclusion in a case involving the same facts and circumstances involved here, the same unions, and in part the very people whom plaintiffs seek to represent. *Allen v. Southern Ry. Co.*, 201 N.C. S.E. 2d 125 (1959) (now under advisement for reconsideration). That Court, examining the facts of this Court in the *Hanson* case, in the light of the facts and contentions made, and in the light of the decision of the Supreme Court of Nebraska in the *Hanson* case, served that "the appellees in *Hanson*, appear to have drawn into sharp focus the issues presented by plaintiffs," and concluded:

"... the very questions now raised before the Court and decided in *Hanson* in the words upon which plaintiffs rely, the facts in the text, do not support their contention."

Thus the highest courts of five states have rejected the arguments that the decision of this Court in the *Hanson* case did not apply to the validity of union dues where it is shown that the unions engage in legislative activities. Only the Court of Appeals in *Nebraska* argued that argument. The Supreme Courts of *Nebraska*, *Texas*, and *North Carolina* rejected that argument and affirmed the opinion of the *Hanson* opinion.

(Tex. Sup. Ct., 1956).
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 any such interpreta-

C. Apart from the *Hanson* Case, an Employee Has No Constitutional Right to Work for a Specific Employer Without His Dues Used for Political or Legislative Purposes with Which He Disagrees.

The Court below found that enforcement of the union shop agreement deprives the plaintiffs of their property and liberty under the First, Fifth, Ninth, and Tenth Amendments to the Constitution of the United States. Since obviously the plaintiffs have no constitutional right to employment with any of the defendant railroads, denial of that employment pursuant to an agreement does not infringe any of their constitutional rights.

In the famous case of *DeMille v. American Federation of Radio Artists*, 77 A.C.A. 430, 175 P. 2d 851, affirmed 31 Cal. 2d 139, 187 P. 2d 769, certiorari denied, 333 U. S. 821, all the judges who considered the case in the trial court, the intermediate appellate court, and the Supreme Court of California sitting *en banc*, unanimously held that DeMille had no legal remedy to protect him from being required under a union shop contract to pay a union assessment to oppose a State Right-to-Work law or lose a \$98,200-a-year contract with the Columbia network. The Supreme Court of California wrote an elaborate opinion in which it considered all the numerous legal theories advanced by illustrious counsel for DeMille. The Court held that opposing a Right-to-Work law was not outside the scope of the union's authority as set forth in its constitution and by-laws. The Court further held that using funds raised by assessments on members for that purpose was likewise within the union's proper functions.

With respect to the contention that the union, by causing DeMille's loss of employment because of his refusal to contribute his money to oppose legislation in which he believed, had violated his constitutional rights, the Court said (31 Cal. 2d at 147, 148, 150; 187 P. 2d at 775, 777):

"The plaintiff next contends that the levy of the assessment and the consequent suspension upon

refusal to meet it, infringed his constitutional right of suffrage, freedom of speech, press and assembly . . .

"The ground of the plaintiff's assertion is that his payment of the assessment would be an expression on his part contrary to his personal beliefs . . .

" . . . payment by the plaintiff of the assessment—would not stamp his act as a personal endorsement of the declared view of the majority. Majority rule necessarily prevails in all constitutional government . . . else payment of a tax levied for a duly authorized and proper objective could be avoided by the mere assertion of beliefs and sentiments opposed to the accomplishment thereof. In a government based on democratic principles the benefits as perceived by the majority prevails . . . Other organizations, such as Medical Associations, Bar Associations, and the like, have used their funds to support favorable legislation or defeat measures considered in the opinion of the majority or its duly authorized representatives to be inimical to the public interest or to its own welfare. It has never been considered that a difference of opinion with the association as to the use of association funds for such purposes, where otherwise lawful, was a matter for judicial interference."

The reference to the use by bar associations of funds for legislative purposes offers a strong analogy. As this Court pointed out in the *Hanson* case (351 U. S. at 238):

"On the present record, there is no more an infringement or impairment of First Amendment rights than there would be in the case of a lawyer who by state law is required to be a member of an integrated bar."

Not only have the courts refused to permit members to enjoin bar associations from participating in campaigns to elect to political office approved slates of candidates for judgeships and positions of states attorney (*La Belle v. Hennepin County Bar Ass'n*, 1939, 206 Minn. 290, 297-298, 288 N.W. 788, 792; *Smith v. Higinbotham*, 1946, 187

Md. 115, 129, 48 A. 2d 754, 761) but they have sustained as against claims of constitutional violation, statutes making the practice of law conditional upon belonging and paying dues to an integrated bar. Of especial interest is the history of the integrated bar in Wisconsin. There the Supreme Court of Wisconsin at first denied the petition for integration of the bar because of the use of dues to maintain a legislative agent. *In re Integration of the Bar*, 1946, 249 Wis. 523, 529-530, 25 N.W. 2d 500, 502-503.

The court thereafter reversed itself and granted the petition to integrate the bar for a two year trial period when it was shown that too substantial a minority of the lawyers in the State had failed to join bar associations. See *In re Integration of the Bar*, 1956, 273 Wis. 281, 77 N.W. 2d 602, 603.

On December 22, 1958, the Supreme Court of Wisconsin issued another opinion (*In re Integration of the Bar*, 5 Wis. 2d 618), which made the integrated bar permanent in Wisconsin. The court found it satisfactory. In this respect the court rejected the argument that integration interfered with the independence of lawyers, stating (at p. 623):

"The integrated Bar does not destroy either the independence of the Bar or of the individual lawyers. The State Bar of Wisconsin was not intended to control and there is no evidence or intimation that it has controlled or attempted to control the thinking of any of its members. When the State Bar Association of Wisconsin through its Board of Governors, an elected representative policy-making body, duly decides a policy within its province on behalf of the State Bar every one understands or should understand the policy is that of the State Bar as an entity separate and distinct from each individual. Such pronouncement of the State Bar does not necessarily mean all of its members agree with that pronouncement, nor is it necessary for them to do so. Individual members are free to think and to express their own opinions. But it is the nature of a representative democratic organization that the elected representatives of the group

speak and act for it in accordance with its organic laws."

The court expressly overruled all of the statements in any of its earlier opinions which had placed any restrictions on the purposes for which the integrated bar could expend funds. 5 Wis. 2d at 626.

The arguments which have been rejected by the court in upholding integration of the bar and suspending or disbarring attorneys who failed to pay dues are in all respects similar to the arguments made by appellees here. See *In re Florida Bar*, Fla., 1952, 62 So. 2d, 20, 23. Similarly see *In re Mundy*, 1942, 202 La. 41, 11 So. 2d 398, where a lawyer refused to pay dues to an integrated bar on the ground that he had the constitutional right to belong or not belong to a bar association. Compare William Wicker, *The Pros and Cons of an Integrated Bar*, 23 Tenn. Law Rev. 457, 459 (December 1954) where William Wicker, Dean of the Law School of the University of Tennessee states:

"The must-be-a-member and the must-pay-dues provisions in the enabling acts of integrated bars have been passed on many times by the courts and every court that has considered them has held them valid."

"People ex rel. Karlan v. Calkin, 248 N.Y. 465, 47 162 N.E. 487 (1928); *In re Disbarment of John D. Greathouse*, 189 Minn. 51, 248 N.W. 735 (1933); *Carpenter v. State Bar of California*, 211 Calif. 358, 295 Pac. 23 (1931); *Kelley v. State Bar of Oklahoma*, 148 Okla. 282, 298 Pac. 623 (1931); *In re Gibson*, 35 N. Mex. 550, 561, 4 P. 2d 643 (1931); *In re Integration of Nebraska, State Bar Ass'n*, 133 Neb. 283, 275 N.W. 265 (1937); *In re Integration of State Bar of Oklahoma*, 185 Okla. 505, 95 P. 2d 113 (1939); *Petition of Florida State Bar Ass'n*, 40 So. 2d 902 (1949).

See also cases collected 114 ALR 161, 151 ALR 617.

Although the integrated bar cases rely on the alleged distinction between special privilege callings and common callings, this issue is irrelevant once it has been accepted

that even persons in a common calling can be required to belong to a union and pay dues and fees to it as a condition of continued employment. No one disputes that this Court in *Hanson* (351 U. S. 225) settled at least that issue. Lawyers have the same constitutional rights of freedom of association, freedom of speech, freedom of thought, and freedom from arbitrary restrictions upon their right to earn a living by practicing their profession as do all other persons. Compare *Ex parte Garland*, 1867, 4 Wall. 333, 379-380; *Schwabe v. Board of Bar Examiners*, 1957, 353 U. S. 232, 238-239; *Konigsberg v. State Bar*, 1957, 353 U. S. 252. If it is constitutional to require lawyers as a condition of practicing their profession to pay money to be used to advocate policies, ideas, legislation, or candidates for judgeships irrespective of the lawyer's opposition to having his money used for purposes with which he disagrees, then it is equally constitutional to permit carriers and unions to enter into union shop agreements under which dues and fees may be used for purposes with which the employee disagrees. If the reasoning of the Court below is sound, then the recent sharp debate in Georgia legal and legislative circles about an "incorporated" bar was but an academic discussion; had the legislature enacted it the Supreme Court of Georgia would have stricken it as unconstitutional, under such reasoning.

More than half of the states have integrated bars.* In

* Alabama (1923, Statute); Alaska (1955, Statute); Arizona (1933, Statute); Arkansas (1938, Constitutional amendment and Court rule); California (1927, Statute); Florida (1949, Court rule); Idaho (1923, Statute); Kentucky (1934, Statute and Court rule); Louisiana (1940, Statute and Court rule); Michigan (1935, Statute and court rule); Mississippi (1930, Statute); Missouri (1944, Court rule); Nebraska (1937, Court decision); Nevada (1929, Statute); New Mexico (1925, Statute); North Carolina (1923, Statute); North Dakota (1921, Statute); Oklahoma (1939, Court decision); Oregon (1935, Statute); Puerto Rico (1932, Statute); South Dakota (1931, Statute); Texas (1939, Statute and Court rule); Utah (1931, Statute); Virgin Islands (1956, Court

view of the reliance upon the integrated bar analogy in this Court in the *Hanson* case (331 U. S. at 238) and the Supreme Court of California in the *DeMille* case (Cal. 2d at 150, 187 P. 2d at 777), we submit that the spread commendation of judges and lawyers of their practices of taking funds from every lawyer in the state, using these funds for purposes including propaganda, legislation, and political activity, shows there is no constitutional basis for the ruling below. That judges and lawyers throughout the country practice among themselves the exclusion from the practice of law of anyone unwilling to pay money to be used for propaganda, legislative and political activity with which he disagrees, shows how completely harmonious with our legal institutions and practices condemned by the court below. Indeed, the validity of a union shop agreement would appear to be *fortiori* proposition if an integrated bar is valid, for the latter unquestionably comes into being by government action,—a legislative act or judicial decree or both,—while a union shop comes into being by private agreement.

It may be argued that the political activity of the integrated bar is largely confined to endorsement of judicial candidates. But once it be held that a man's right to a living by following his chosen profession can constitutionally be conditioned upon his being a member of an association and upon his paying fees and dues to that association for purposes to which he is opposed, the nature of the restrictions or activities to which he is opposed does not seem relevant to the constitutionality of requiring him to join and pay fees and dues. If the association exceeds its proper function his remedy is not to attack compulsory membership or dues payment but to remedy or prevent such other improper activities. There is at least as much interference with a man's freedom of association, freedom of the

rules); *Virginia* (1938, Statute and Court rule); *Washington* (1933, Statute); *West Virginia* (1945, Statute and Court rule); *Wisconsin* (1957, Court rule); *Wyoming* (1939, Statute and Court rule).

and freedom of speech in requiring him to pay dues to a union which strikes to secure a collective agreement for a 35 hour week or compulsory retirement at age 70 or strict seniority, as in the union activities considered below. Cf. *Lamon v. Georgia Southern Railway Co.*, 1955, 212 Ga. 63, 90 S.E. 2d 658; *McMullans v. Kansas, Okla., & G. Ry. Co.*, (E. D. Okla., 1955), 129 F. Supp. 157, 159, aff'd (10 Cir. 1956) 229 F. 2d 50, cert. den. 351 U. S. 918; *Goodwin v. Clinchfield R. Co.*, 1954, 125 F. Supp. 441, aff'd (6 Cir. 1956), 229 F. 2d 578, cert. den. 351 U. S. 953. Compelling financial support of a union involves just as much if not more infringement on freedom in the sphere of supporting different policies in negotiating agreements and processing grievances as occurs in the legislative or political sphere; in the negotiating field the impact of the union's activities on the individual is direct and binding. Groups of employees within the same bargaining unit have opposing interests in seniority, hours of work, piece work as against straight hourly rates of pay, etc. The compulsions which the court below accepts as constitutional when applied to the realm of negotiating contracts and processing grievances are not constitutionally less objectionable than the activities the court below finds unconstitutional. It is thus apparent the court below has refused to accept the principle of the union shop, not that it has dealt with anything not inherent in the union shop.

While the *DeMille*, *Hanson*, *Allen*, *Sandsberry*, and *Moore* cases are the only cases dealing with the constitutional right of an employee not to have his right to a given job conditioned on payment of fees and dues to be used for legislative or political purposes to which he is opposed, in a line of cases arising under the Union Shop Amendment to the Railway Labor Act the courts have denied employees relief, holding as against all variety of constitutional challenges, that the making and performance of a union shop agreement identical with the agreements involved here did not constitute governmental action. In several cases the plaintiffs were members of a religious

sect which forbade union membership. They invoked the First Amendment. The courts held on the ground that union shop agreements are beyond constitutional limitations because their exercise by private parties does not constitute the exercise of governmental power. In *Otten v. B. & O. R. Co.* (C. A. 2, 1953), Judge Learned Hand, in so holding (at p. 61):

"... Otten complains that the other employees are not free to work with anyone who will not combine with them. It is true that in so doing they exercise a kind of economic sanction upon those who will not employ him unless he will join, but his complaint of combination and the railways' refusal are not unconstitutional. It be because they conflict with his scruples. The conflict results in making it necessary either for him to yield what it deems to be one of its interests—a 'union shop' with the company—or to give them in dealing with a railway. The plaintiff to yield on a point of conscience. Conflicts are inevitable; and, when to economic no political sanction is added, they do not raise any constitutional question.

"The First Amendment protects one's freedom of religion by the government, though even then, in certain circumstances; but it gives no one the right to interfere in the pursuit of their own interests or to form their conduct to his own religious beliefs. A man might find it incompatible with his religion to live in a city in which open saloons are permitted, yet he would have no constitutional right to demand that the saloons must be closed. He would have to leave the city or put up with the *iniquitous* and the economic loss his change of domicile would involve. We must accommodate our idiosyncrasies as well as secular, to the compromise of our religious life; and we can hope for no reward for this may require beyond our satisfaction or our expectations of a better world. (omitted; emphasis the Court's.)

The plaintiffs in-
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To the same effect, see later decisions in this case
F. Supp. 836; aff'd, 2 Cir., 1956, 229 F. 2d 919, certiorari
denied, 351 U. S. 983.

And, in *Wicks v. Sou. Pac. Co.*, and in *Jensen v. Pac. R. R.* (S. D. Calif., 1954), 121 F. Supp. 454; Cir., 1956, 231 F. 2d 130; certiorari denied, 351 U. S. 983. The Court similarly rejected the contention that shop agreement executed pursuant to the Union Shop Amendment to the Railway Labor Act, deprived plaintiffs of rights under the First Amendment, stating (at 130):

"... As a separate reason for denying relief we hold that the plaintiffs are not entitled to protection of the First Amendment to the United States Constitution because that amendment protects only congressional action and it is not shown here that the action complained of is congressional. [*Reynolds v. United States*, 98 U.S. 145 (1878)]."

The Supreme Court of North Carolina, in *Hughes v. A.C.L. R.R.*, 1955, 242 N.C. 650, 89 S.E. 2d 441, cited the *Ottens* and *Wicks* cases with approval, stating (242 N.C. 666, 89 S.E. 2d at 452):

"... the Act of Congress does not compel or coerce a union shop. As pointed out by Judge I. Hand, it is 'permissive,' not 'self-operative.' The ground that the first ten amendments to the Constitution of the United States protect against congressional action and are not limitations upon the acts of private parties, *Corrigan v. Buckley*, 271 U. S. 323, 46 S.Ct. 521, 70 L. Ed. 969, it has been held, as against challenge on constitutional grounds not alleged here, that a railroad employee's constitutional rights are not infringed by the Union Shop Amendment. *Wicks v. Baltimore & O. R. Co.*, *supra*; *Wicks v. Southern Pac. Co.*, D.C.S.D. Cal., 121 F. Supp. 454, ...

For similar cases in accord under the Railway Labor Act, see *Sandsberry v. I.A.M.*, 1954, 277 S.W. 2d 412, affirmed, Texas Sup. Ct., 1956, 295 S.W. 2d 412, certiorari denied, 353 U. S. 918, and *Moore v. C. & O. R. Co.*

mond, Va., Hustings (t., 1954, 34 L.R.R.M. *curiam*, 1956, 198 Va. 273, 93 S.E. 2d 140. accord under the Labor Management Rel U.S.C. 151, *et seq.*) see *Hess v. Petrillo*, 259 Cir., 1958). For earlier cases sustaining closed shop agreements as against constitutions, see *International Association of Machinists*, 1943, 153 Fla. 672, 15 So. 2d 485; *W* 1938, 277 N.Y. 1, 12 N.E. 2d 547, appeal U. S. 621.

There is no case to the contrary except below in this case. Every other case that contrary has been reversed on appeal.

IV. THE LEGISLATIVE AND POLITICAL ACTS OF APPELLANT UNIONS ARE GERMANE TO BARGAINING.

As one of the bases of its order the trial court found that "the exaction of moneys from plaintiffs and their representatives for the purposes and activities described herein are not reasonably necessary to collective bargaining for maintaining the existence and position of said plaintiffs as effective bargaining agents or to the benefit of the employees whom said defendants represent of common mutual interest" (R. 103).

This Court in the *Hanson* case (351 U.S. 408) held that it was not passing on the issues which were presented if a union under a union shop agreement "assessments" for purposes not "germane to collective bargaining." The opinion shows that the Court's use of "assessments" in its usual sense, as distinct from fees and dues, which are generally used in support of the union. In the instant case the assessments are confined to fees and dues. There is no finding that any assessment for any purpose is proposed by any defendant on anyone. But even in the *Hanson* case is read as meaning that the assessments must be used for purposes germane to collective bargaining.

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It is plain that the legislative and political a-
 shown by the instant record are germane to collect-
 gaining once the role of legislative and political ac-
 the area of securing benefits for railway worker
 amined. In the railroad industry the efforts of the
 labor organizations to obtain better economic rewa-
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 industrial life have on some subjects been directed a-
 if not more to legislative and political methods of ac-
 their goals as to conventional "collective bargainin-

Railroad employees have obtained through leg-
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 argued that a labor union acts within the normal a-
 such an organization when it obtains certain bene-
 those it represents through an agreement providin-
 benefits, but acts outside such ambit when, because
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 other reasons, it obtains the same benefits through
 tion.

The statutory scheme of the Railway Labor Act v-
 role in collective bargaining which it assigns to po-
 appointed persons again makes it only reasonab-
 labor organizations in the railroad industry concern-
 selves with politics. The National Mediation Board

decisions critical to railway labor (45 U.S.C. 153, First (e), (f), (g), and (1); 155; 156 (a), (b), Third). The Emergency Board, the President of the United States (45 U.S.C. 156), decisions critical to railway labor (45 U.S.C. 157) arbitrators appointed by the National Labor Relations Board in many instances in which management and labor agree, make decisions critical to railway labor (45 U.S.C. 157). Neutral referees sitting as members of the Railroad Adjustment Board, appointed by the Mediation Board, make decisions critical to railway labor (45 U.S.C. 153, First (1)). To suggest that unions do not have the same interest in who appoints arbitrators to such positions as they have in negotiating and settling disputes thereunder is completely untrue. Thus legislative, political, and collective bargaining activities in the railroad industry have been so intertwined.

Numerous hearings and debates in Congress regarded the efforts of the unions to secure an agreement of the railroads to legislative action. The normal and desirable aspect of collective bargaining was the Railway Labor Act of 1926, the Railroad Unemployment Act of 1937, and numerous amendments to the Railway Labor Act and to the Railroad Unemployment Act have been the result of collective bargaining between railroad unions and the railroads. In many instances the representatives and executives of the unions drafted the legislation and agreed to it before presenting it to Congress. Both labor and carriers joined in lobbying for the legislation, and both were active in hearings and urging it through the legislative process. The origin of the Railway Labor Act is well recited by counsel for the organized railroads in the Hearings before the Committee on Inter-

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Commerce, House, 69th Cong., 1st Sess. on H. R.
9, 11:

"This bill which has been introduced in the
in the Senate simultaneously represents th
of months of negotiations and conferences be
representatives of 20 railroad labor organiza
the Association of Railway Executives repres
representing the great majority, practically
carriers by railroad.

"Almost everything in this act could have bee
into an agreement signed by the executives of
roads and the executives of the organization
poyees and put in force and effect. Excep
creation of certain Government tribunals."

The description of the origin of the Railroad Re
Act of 1937, in hearings before House Committee
state and Foreign Commerce, 75th Cong., 1st S
H. R. 6956, (1937) as set forth by Mr. George M. F
President, Brotherhood of Railway Clerks, is as
(pp. 10-12):

"In view of that litigation and the uncertainty
future of the legislation the President of the
States wrote a letter to the representatives of
ways and also to myself in the month of Decem
and suggested, in view of the many efforts
been made to pass railroad retirement legisla
the resulting legal controversies, that he would
that the railways and the representatives of t
ers undertake to consider the subject of re
legislation in conference and see if they could
agreement on retirement legislation. . . . Th
ferences continued with some degree of re
although intermittently, until the 18th day of F
at which time the representatives of the two
reached an agreement, and that agreement re
the preparation of the bill which is now un
sideration by your honorable committee,

"Now I should say that this committee had reported from time to time to their constituent organizations, making up the association, and at the meeting which was held in Cincinnati, Ohio, on March 5, 1937, at which time a copy of the bill and the agreement underlying the bill was submitted to the heads of all of the 21 unions, and the President of the Brotherhood of Railway Trainmen was personally in attendance at that meeting and after some 8 or 9 hours of extended explanation of the bill and the agreement the 21 unions unanimously endorsed the proposed legislation and the agreement,..."

Full texts of the letter of President Roosevelt and the agreements above described appear in Hearings before Committee on Interstate and Foreign Commerce, House of Representatives, 79th Cong., 1st Sess. on H. R. 1362 (1945), Pt. II, pp. 643-656. The President of the Association of American Railroads testified in 1945 that he had contemplated that future legislative changes in the Railroad Retirement Act would be subject to the same collective bargaining procedures as the original Act. He stated (*ibid.*, pp. 659-661):

"I have gone into the history of this piece of collective bargaining in some detail, because I believe it offers a picture of joint action between management and labor unparalleled in the industrial record of the United States....

"There was no specific agreement between railroads and railroad labor, at the time of this collective bargaining procedure in 1937, as to future changes, if any, in the railroad retirement plan then agreed upon. However, my own thought at the time, and since, was that any substantial change in the plan would be subjected to the same procedure of collective bargaining. In fact, this seemed to be the thought of all of us, on both sides, at that time."

For other descriptions of the conferences and negotiations between the railroads and the railway labor organiza-

tions which preceded the enactment of the Railroad Retirement Act of 1937, see 81 Cong. Rec. 6084-6085, 6227; 92 Cong. Rec. 8262, 8280, 10093-10004, 10006; Hearings, House Subcommittee on Interstate and Foreign Commerce, on H. R. 9706, 76th Cong., 3d Sess., June 1940, p. 82, Hearings before Subcommittee on Interstate and Foreign Commerce, Senate, on S. 293, 79th Cong., 1st Sess., July 1945, pp. 40-41, 94-95, 119-123, 141, 149, 163, 275, 277; Hearings, House Committee on Interstate and Foreign Commerce on H. R. 1362, 79th Cong., 1st Sess. (1945), pp. 338-340, 343-345, 417-418, 478, 643-656, 659-663, 665, 676-677, 683, 685-686, 699, 795.

The railway labor organizations and the railroads negotiated extensively with respect to a federal railroad unemployment insurance act. (See Hearings before a Subcommittee of the Committee on Interstate and Foreign Commerce, House, on H. R. 10127, 75th Cong. 3d Sess., May and June, 1938, pp. 21, 146, 203; Hearings, before House Subcommittee on Interstate and Foreign Commerce on H. R. 9706, 76th Cong., 3d Sess., June 1940, pp. 82, 83; Hearings before Senate Subcommittee on Interstate and Foreign Commerce on S. 293, 79th Cong., 1st Sess., July 1945, pp. 94-95; Hearings, House Committee on Interstate and Foreign Commerce, on H. R. 1362, 79th Cong., 1st Sess., March 1945, pp. 699-700, 948). They were unable to reach an agreement on the original act but they did reach agreement on the various amendments which were adopted before the statute went into actual operation (84 Cong. Rec. 6631). And they continued from time to time to negotiate and bargain about the type of legislation which they desired the Congress to enact and in 1940 reached agreement on many basic changes in the Railroad Unemployment Insurance Act. Hearings before Committee on Interstate and Foreign Commerce, House, on H. R. 9706, 76th Cong., 3d Sess., June 14, 1940, pp. 15, 22, 24, 26, 86, 87, 143; 86 Cong. Rec. 5522, 9645, 12877.

The 1948, 1951, and 1957 amendments to the Railroad Retirement and Unemployment Insurance Acts were all negotiated in collective bargaining between the railroads and the railway labor organizations and presented to Congress as agreed-upon bills. Congress adopted the 1948 and 1951 amendments on this basis. With respect to the 1948 Amendment to the Railroad Retirement and Unemployment Insurance Acts, providing for an increase of 20% in the retirement annuities for railroad workers and other improvements, its sponsor in Congress stated (94 Cong. Rec. 7437):

“As I stated when I introduced this bill H. R. 6766, it is the product of an agreement between railroad labor and railroad management. Their action in this instance is indeed a continuation of the spirit of mutual agreement upon which the Railroad Retirement Act of 1937 was based. It will be recalled that the basic railroad retirement system was the result of agreement between labor and railroad management.”

To the same effect see 94 Cong. Rec. 6814-6815, 7439, 7440, 7443-7445, 7933; Hearings, House Committee on Interstate and Foreign Commerce, on H. R. 6766, 80th Cong. 2d Sess., June 2, 1948, pp. 6-7, 10.

With respect to their agreement on the 1951 amendments to these statutes see the following statement on the floor of the Senate (97 Cong. Rec. 13529):

“Mr. Hill: . . . to be more specific, the Railroad Labor Executives' Association, representing 80% of all railroad employees, and the Brotherhood of Railroad Trainmen, which represents 9% of such employees, which organizations were sharply in disagreement, are in agreement with the provisions of the conference report. I am happy to advise also that the Association of American Railroads, representing railroad management, is also in accord with the terms of the conference report.”

To the same effect see 97 Cong. Rec. 13642.

When amendments were introduced in 1957 in Congress, their sponsor in the House stated (103 Cong. Rec. 6305):

"Mr. Harris: Mr. Speaker, at the joint request of the Association of American Railroads and the Railway Labor Executives' Association, I am introducing a bill, prepared by the Railroad Retirement Board, to amend The Railroad Retirement Act and The Railroad Unemployment Insurance Act."

A similar statement was made in the Senate. 103 Cong. Rec. 6486.

On the state level similar activity has taken place with respect to all sorts of legislation regarding safety, sanitation, prompt payment of wages, check cashing facilities, and many other matters.

The record is replete with instances of the type of legislation in which labor organizations interest themselves, and in specific legislation in which some of the defendant labor organizations interested themselves. For example, plaintiffs introduced an exhibit to show that the Brotherhood of Railway Clerks engages in efforts to influence legislation of various types in various states. P. Exh. 229. But that document, and succeeding issues of "Legislative Facts" (P. Exhibits 230, 231) show the types of legislation in which that organization interests itself. First and foremost, are the Railroad Retirement and Unemployment Insurance Acts, the railroad equivalents of state unemployment insurance laws and the Social Security Act, as supplemented in other industries by collective bargaining agreements. (The record contains literally hundreds of instances showing the great interest and substantial activity of all the labor organization defendants, as well as other railway labor organizations, in these two subjects.) Another is the Federal Employers' Liability Act. A third type of legislative activity pertains to efforts to equalize the competitive positions of railroads with other forms of

transportation, thus protecting the work of railroad employees. Another is legislation directed to safe reduce the physical hazards of railroad employment. legislative activity in which it engages seeks to protect the purchasing power of wage earners. (Exh. 229, pp.

There are three model bills which this Brotherhood to have enacted in all the States, and has had thus some small measure of success. The first would protect employers that require medical examinations of their employees, a common practice on the railroads, from charging the employees for such examinations. The second would require employers that pay their employees by check to make arrangements under which the employees could cash those checks without being charged a fee. The third would establish certain standards of health and sanitation in working conditions. (Plaintiffs Exh. 229, pp. 6-8).

With respect to state legislative activities of the Brotherhood of Maintenance of Way Employees, we urge the reading of pages 80 through 82 of the Brief of the defence. Orig. rec. 269-71. All of it would be worth reading. It shows, among other things, the efforts of this organization to obtain through collective bargaining protection of those they represent from the elements while riding track motor cars in all kinds of weather, their inability to obtain such arrangements by agreement with the railroads, and their resort to legislative activities. It also shows that in many states all other workers were protected by certain sanitation and health laws that excepted railroad workers, and the efforts of this organization to remove such exception. It refers to the unsafe and unsanitary housing facilities which many railroads furnish their employees who live for substantial periods in camp. It describes other types of legislation in which this organization interests itself of obvious direct and immediate concern to the employees it represents.

Any close analysis of the relationship between legislative activity and collective bargaining in the railroad

dustry will disclose that often the legislative device has been used to establish as standards for the minority non-agreeing railroads those standards to which the majority of the carriers are willing to adhere. Instead of securing by agreement with the willing railroads benefits which might place them at a competitive disadvantage with other unwilling railroads, benefits have been bargained or legislated on a national basis for all railroads. In those matters where the conformity of a minority required legislative action or the railroads wanted policing and enforcement by governmental agencies, the majority of the railroads acting through the Association of American Railroads and the majority of employees acting through the Railway Labor Executives' Association have secured legislation which achieved for their collectively bargained arrangements a uniformity and permanence difficult if not impossible to achieve by merely a collective bargaining contract.

Political activity and the expansion of legislative activity beyond mere bread and butter issues for railroad unions have been the necessary consequences of effective legislative activity and the type of regulation of employment relationship which the agreed upon legislation has established. When economic issues are to be decided by Congress or by mediation boards, referees, or national emergency boards appointed by the President or other members of the executive department, labor organizations naturally desire to see officials sympathetic to labor's aims elected to office. Likewise, effective political action requires expansion beyond mere bread and butter issues in order to obtain wider political support to help elect sympathetic officials. These broadened issues can in every instance be traced back to railway labor's legitimate efforts to secure the objectives usually sought by collective bargaining. The history of regulation of railroads by legislation and administrative agencies, with respect not

only to labor relations, but all aspects of the places all collective bargaining efforts in a s which collective bargaining cannot function effectively realistically without legislative and political activity.

In this setting it is apparent that the legislative political expenditures of the defendant unions are directly related to collective bargaining objectives. Proceeding from plaintiffs' arguments logically, we reach the nonsensical conclusion that because the defendant organizations sponsored and supported the enactment of Section 2, Eleventh, the application of that legislation to them is unconstitutional. Under plaintiffs' theory, the way for such legislation to be enacted in an effective manner would have been for the proposition to have arisen spontaneously in Congress and for these organizations to have refused to testify or state their position concerning the application of railroad representatives as the only witnesses.

V. SECTION 2, ELEVENTH VALIDLY SUPERSEDES INCONSISTENT STATE LAW.

The issues in this case seem clear to us. To us it is clear that Congress repealed its own prohibition, and the validity of such repeal not only cannot be questioned, but is not questioned.

Congress also expressly provided that state law does not apply to the subject of the type of union security agreement which Congress had theretofore prohibited and after ceased to prohibit. Clearly, Congress likewise acted within its authority in declaring its intention to supersede state law. The individual appellees argue that Section 2, Eleventh of the Railway Labor Act was ineffective to supersede state law because it unconstitutionally deprived them of rights they might have under state legislation.

It defies rational analysis to argue, as plaintiffs do, that Congress acted beyond its powers when it superseded state law in a field in which Congress may legislate. The argument necessarily is an argument that the second

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of Article VI of the Constitution of the United States is unconstitutional.

Normally, in cases where the applicability of a state statute is challenged on the ground that it has been superseded by federal legislation in a field in which Congress may legislate, the issue is couched in terms of whether Congress intended to preempt the field. See, e.g., *Napier v. Atlantic Coast Line R. Co.*, 272 U.S. 605, 611; *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230. In most such situations the answer is obtained by an analysis of "conflicting indications of congressional will". *Garner v. Teamsters Union*, 346 U.S. 485, 488. The problem is one of determining Congressional intent; it has never heretofore been a question of Congressional power to preempt state law in a field where Congress may legislate.

The power of Congress to legislate in the field of labor relations in the railroad industry of course is not subject to question. *Texas & N. O. R. Co. v. Brotherhood of Railway Clerks*, 281 U.S. 548, 50 Sup. Ct. 427; *Virginian Ry. Co. v. System Federation No. 40*, 300 U.S. 515, 57 Sup. Ct. 592. Certainly no one questions today that Congress had the power to prohibit union shop agreements in the railroad industry, as it did between 1934 and 1951. If Congress can legislate in a field, we had supposed that it was unquestioned, until this case was argued, that it could legislate to the exclusion of state law. As stated above, heretofore when this question arose it came up in terms of not whether Congress could supersede state law in a field it was regulating, but whether it intended to do so.

There is no question that in this case Congress intended to supersede state law. It expressly said so. Section 2, Eleventh commences with the words "Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or territory thereof, or of any State. . . ." Plaintiffs do not argue that Congress did not so intend; indeed, their case is predicated on Congress so intending.

It should hardly be necessary at this time to state that the third clause of Section 8 of Article I of the United States Constitution vests the power to regulate commerce in the federal government. At most, states may regulate such activities only until Congress indicates that a state should not do so. Indeed, in many cases, the absence of federal legislation on the subject, and the invalidation of interstate commerce has been held invalid under the commerce clause on the ground that the failure of Congress to legislate indicated its intention that the subject should not be regulated, or on the ground that national uniformity was required. See, e.g., *Southern Pacific R. Co. v. United States*, 325 U.S. 761, 769, and cases there cited; *Morgan v. United States*, 328 U.S. 373, 386. Thus, to argue that Congress lacks constitutional powers when it preempts state law in a field in which it may legislate is to strike down a federal law because of the existence of state laws,—precisely the opposite of the effect which the Supremacy Clause was intended to achieve. If Congress can validly prohibit or preempt union shop agreements in the railroad industry, if it unquestionably has the power to do, its action cannot become invalid because of an express indication that it intends state laws not to apply. Such indication does not indicate what otherwise might be argued, that in some cases what Congress did or did not do was intended to preempt the field. It is the Supremacy Clause of the Constitution, not the indication by Congress of what it intends, that nullifies any inconsistent state law. *Gibbons v. Ogden*, 22 U.S. 1, 210-11. As indicated above, in many cases no exemption is found without an express provision that state law shall be superseded. See, e.g., *Garner v. United States*, 346 U.S. 485; *Weber v. Anheuser-Busch*, 346 U.S. 468; *Pennsylvania v. Nelson*, 350 U.S. 497, 76 S. Ct. 100, 100 L. Ed. 640; *Public Utilities Comm. of California v. Public Utilities*, 355 U.S. 534, 78 S. Ct. 713, 2 L. Ed. 2d 76. In such cases, once it is determined that a federal statute

to point out of the United States interstate commerce that a state can dictate that a state, even in the state regulation, is invalid under the power of Congress. The subject should be uniformity. *Co. v. Arizona*, *an v. Virginia*, does not exceed its laws in a field of federal statute. The opposite was designed to or refuse to had industry, as action cannot be taken that it in action only makes that is, whether decided to preempt the Constitution, intends, which *ns v. Ogden*, 9 many cases pre- sion that state *r v. Teamsters* *Busch*, 348 U.S. 76 S. Ct. 477, *Calif. v. United* 2d 760. In such statute, or some

times even the absence of a federal statute, conflicts with state provisions, and that Congress evidenced no intention to keep the state laws in effect, it is the Supremacy Clause that nullifies the state laws. The presence in the federal statute of an express intention to supersede merely eliminates argument as to what Congress intended. Since it is the Supremacy Clause of the Constitution that strikes down state laws inconsistent with the congressional will, when Congress may legislate, to argue that by enacting a otherwise valid Congress exceeded its constitutional authority because it replaced state regulation, is nothing more than an argument that the second clause of Article of the Constitution, the Supremacy Clause, is unconstitutional.

VI. APPELLANTS WERE DENIED DUE PROCESS OF LAW BY CLASS ACTION BEING SUSTAINED, THE DEFINITION OF THE CLASS, AND JUDGMENT BEING RENDERED FOR SUCH CLASS.

All the plaintiffs are employed in the craft or occupation represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (See *supra*, Statement of the Case, first footnote.) That defendant is thus the only defendant union against whom all of the plaintiffs seek relief for themselves as distinguished from relief for other members of the purported class.

The Stipulation and the Order (R. 101, 167) define the class as those employees and former employees of the defendant railroads who are "affected by *and opposed to* the union shop agreement *who are also opposed to* the use of periodic dues" for the challenged purposes. (Italics applied.) The composition of the class is thus defined by three basic tests, one objective, "affected by" (not simple, but at least more or less objective), and two subjective, "opposed to . . . who are also opposed to," or a combination of these attitudes.

It is obvious that a class suit, in which a judgment binds absent persons, cannot be brought unless the requir-

ments of due process with respect to such p
fied. *Smith v. Swarmspedt*, 16 How. 288,
942; *Macon and Birmingham Railroad Co.*
1, 24; *Hansberry v. Lee*, 1940, 311 U.S. 33
85 L. Ed. 22. And such determination mu
upon the basis of allegations, or even admi
the basis of the facts established. *Pacific*
Reiner, (D.C., E.D. La., 1942), 45 F. Sup
Oneida Paper Products Co., (D.C., D.N.J.
Supp. 919; *Goldi v. Jones* (2d Cir., 1944), 14
Weeks v. Bareco Oil Co. (7th Cir., 1941), 12
interests of the persons in the alleged clas
of the trial are among the factors to be c
termining whether a class suit can be mai
and Birmingham R. Co. v. Gibson, 85 Ga. 1,

In the light of these principles, let us exa
action" further.

**A. A Class, for the Purpose of Adjudicating the
Persons, Cannot Be Based Upon Mental**

It is well settled that a class action cannot
for an alleged class whose composition is
ascertaining the mental attitude (or in th
bination of mental attitudes) of individual
case so holding, as well as the leading cas
of class action generally, is *Hansberry v.*
U.S. 32, 44, where this Court held that a cl
composed of those signers of a restrictiv
wished to enforce it where there were oth
wished to have it declared void. The Court

"It is plain that in such circumstances
to be bound by the agreement would
single class in any litigation brought
Those who sought to secure its benefi
it could not be said to be in the sam
represent those whose interests are in
formance....

persons are satisfied, 301-3, 14 L. Ed. 2d 301, 38 S. Ct. 301, 61 S. Ct. 115, 125 F. 2d 84. The class and the locale considered in de-maintained. *Macon*, 1, 23, 24.

examine this "class

the Rights of Absent Mental Attitudes.

cannot be maintained in is determined by in this case, a com-duals. The leading case on the subject *Lee v. Lee*, 1940, 311 a class could not be active covenant who e. other signers who court said:

aces all those alleged ould not constitute a ought to enforce it. enefits by enforcing same class with or are in resisting per-

"Because of the dual and potentially conflicting interests of those who are putative parties to the movement in compelling or resisting its performance it is impossible to say, solely because they are putative parties, that any two of them are of the same class."

Thus it is fundamental that a class or classes consist of factional groups, as in *Hansberry. Gray v. F.D.C.* (D.C., E.D. Mich., 1951), 99 F. Supp. 992, affd, 200 F. 2d 103 (6th Cir., 1952); *Horton v. Citizens Natl. Trust Bank*, 86 Cal. App. 2d 680, 195 P. 2d 494 (1948); *Radio Corp. of Am.*, (3d Cir., 1950), 183 F. 2d 515. In the last-cited case, some members of a union sought to represent either the whole membership of the union or the members agreeing with them. The court held that a class could not be sustained on either theory, because the plaintiffs could not be said to represent all members of the union and any smaller group classified solely on the basis of attitude was not a class. The court said:

"It follows that the suit cannot be sustained as brought on behalf of the whole membership of Local 103 as a class. Nor can it be sustained as brought on behalf of all members of Local 103 with the exception of defendants Leto and Fox and those members who are in concert with them. This is but another way of describing those members of the Local who are not in agreement with the plaintiff. To sustain such a class as may support a true class suit is too ill-defined and ephemeral in make-up. To sustain it would agree with the plaintiff today may be persuaded tomorrow to take sides with his opponents in a true class suit the plaintiffs stand in judgment on the class and a judgment for or against the class benefits or binds each member of the class under the principle of res judicata. The members of the class must, therefore, be capable of definition as being either in or out of it. Such a definition would not be possible in a case, such as this, involving fluid fractional groups in a labor union.

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International Alliance
1950; 183 F. 2d 685,
Fitzgerald v. San-
app. 438; Most Wor-
Sons of Light Lodge
164 (1953).

not purport to repre-
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t alike on a number of
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District of Columbia,
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who became parties in
been pending.

ted class may change
their minds about one
permit a class to be
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to certain activities of
We know of no prior
airvoyant powers. Yet
e trial court ascertain
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jects, or even know that
an plaintiffs? Even if
d be ascertained at any
hed for no longer than
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d in part upon kaleido-
attered individuals.
eorgia is found in Code

"Members of a numerous class may be rep-
a few of the class in litigation which effects
of all."

Although the question appears not to have been
decided in Georgia, it has some significance that
from which *Code Section 37-1002* was derived
consisted of the citizens of a municipality, a g-
tainable by objective standards, *Macon and B-*
Railroad Company v. Gibson, 85 Ga. 1, 23 (1890);
Martin, Inc. v. Anderson-McGriff Hardware Co.
291 (1938).

It is more significant that in the cases even
in which class actions have been approved, the
ways been, until this case, objective standards
measure or determine the class. Thus, class a-
been held appropriate in litigation involving c-
municipality (*Macon and Birmingham Rail-*
Gibson, 85 Ga. 1 (1890)); property owners i-
(*Kimzey v. Michel*, 191 Ga. 158 (1940)); heirs
deceased person (*McDougald v. Williford*, 1-
(1854)); creditors of a business (*Schley v. Di-*
273 (1857); *Allen v. Grant*, 122 Ga. 552 (1905)
Wright, 147 Ga. 662 (1918); *Columbus Iron Wor-*
164 Ga. 121 (1927); *Clark Milling Co. v. Sim-*
55 Ga. 505. (1923)); policy-holders of a mutua-
company (*Carlton v. Southern Mutual Ins. Co.*,
(1884)); members of unincorporated voluntary s-
(*O'Jay Spread Company v. Hicks*, 185 Ga. 507 (1-
ard v. Betts et al., 190 Ga. 530 (1940)); and me-
church (*New Mission Baptist Church v. City*
et al., 200 Ga. 518 (1946); *Slaughter v. Land et*
156 (1942); *Bates v. Houston*, 66 Ga. 198 (1880)
in the case last cited there was a division in
membership, the minority group had been ider
physical seizure and use of the church property

The members of the class found by the trial court in this case are anonymous, free to move in or out of the class with each National, State, or local election, each disputed issue, each change of opinion, each passing day. Those who are in this class today may be out of it tomorrow. Each affected person remains free to elect or reject the class even after judgment is rendered. Until the class becomes fixed so that the members can be definitely identified, there can be no essential common interest and common right. The significance of this to the union defendants is that they cannot know whose rights have been adjudged adversely to the union defendants even after the final judgment and decree. Thus it subjects them to being held in contempt for violating the injunction without knowing they have done so; they may enforce the agreement against certain persons believing them to be outside the purported class, and be wrong in such belief,—and thus be penalized for lacking clairvoyance. This situation, or potential situation, reveals perhaps as clearly as any case the soundness of the rule that a class cannot be based upon mental attitudes.

B. A Class Action May Not Be Maintained Unless It Can Be Determined at the Time the Decree Is Rendered What Persons Are Bound.

It has been stated that a fair test of the right to maintain a class suit is whether a decree would be binding on absent persons asserted to be members of the class. *Bickford's v. Fed. Res. Bank of N.Y.* (D.C., S.D.N.Y. 1933), 5 F. Supp. 875.

The railroad defendants operate lines in Georgia, Florida, North Carolina, South Carolina, Virginia, Tennessee, Kentucky, Ohio, Indiana, Illinois, Missouri, Alabama, Mississippi, Louisiana, and the District of Columbia. (R. 196) There is nothing in the record to show which of the nine railroad defendants operate lines, have employees, or do business, in Georgia.

The decree is not restricted to Bibb County nor to the State of Georgia. It undertakes to operate with respect to all employees of the defendant railroads everywhere who are within the alleged class.

The decree purports to adjudicate rights of individual employees under several union shop agreements, including the right to recover damages by reason of the enforcement of the agreements as to them.

If this were a proper class action, then a judgment against the plaintiffs would be a personal judgment against each member of the class that he had no right to recover initiation fees, dues, and assessments, damages for loss of employment, or even to contest the validity of the union shop agreements. It is established that a judgment in a proper class action precludes all members of the class. *Supreme Tribe of Ben Hur v. Cauble* (1921), 255 U.S. 356, 367, 41 S. Ct. 338, 65 L. Ed. 673; *Hartford Life Ins. Co. v. Ibs* (1915), 237 U.S. 662, 35 S. Ct. 692, 59 L. Ed. 1165; *Knowles v. War Damage Corporation*, (App. D.C., 1948), 171 F. 2d 15; *System Federation No. 91 v. Keed* (6 Cir. 1950), 180 F. 2d 991; *Advertising Specialty National Ass'n v. Federal Trade Commission* (1 Cir. 1956), 238 F. 2d 108; *Bickford's v. Federal Reserve Bank of New York* (1933) (D.C., S.D. N.Y.) 5 F. Supp. 875.

This is true even though all members of the class are not within the jurisdiction of the court where the suit is tried. *Supreme Tribe of Ben Hur v. Cauble* (1921), 255 U.S. 356, 367, 41 S. Ct. 338, 65 L. Ed. 673; *Advertising Specialty National Ass'n v. Federal Trade Commission* (1st Cir. 1956) 238 F. 2d 108, 120. It is principally for this reason that "the members of the class must, therefore, be capable of definite identification as being either in or out of it." See excerpt from *Giordano v. Radio Corp of Am.*, 183 F. 2d 558, 560-1 (3d Cir., 1950), and cases cited *supra* therewith.

Here the class, if it had any members other than plaintiffs, was composed of persons scattered at least over 14 states and the District of Columbia. They were not parties

to the action except through the class device. No notice was made by the plaintiffs or by the Court to give notice by publication or otherwise. The number in the class was not known—and could not be known—each person who otherwise qualified made known his attitude. Yet the Bibb County Superior Court undertook to decide the rights of all of these silent, unidentified persons and to bind them by a personal judgment which affected their property rights. The judgment was in their favor but it might have been adverse. And as we have said, a judgment is binding in a proper class action if it is adverse to the class. The absent members cannot play “heads or tails you lose.” Yet that is exactly what permitting a class action in this case would invite. If plaintiffs win, they could later say they had the requisite mental attitude and were included in the class that won. If plaintiffs ultimately lose, those same persons could say they had different attitudes and attack these same defendants on a different theory. And, supposing plaintiffs lose, how about a plaintiff who did not have those views when this action was pending and adjudicated but acquired those views later? How about that same person if plaintiffs win? We can only speculate on the answers to such questions, but we are to be enjoined we are entitled to know just what we are enjoined from doing.

C. Claims for Damages in Individual Amounts May Not Be Subject of a Class Action.

Regardless of whether the trial court decided against the alleged class represented by the plaintiffs, the court undertook to adjudicate their rights concerning the shop agreements and forever to bind them by its decision. But the impropriety of the class is eloquently demonstrated by the failure of the court to award damages to anyone except to the named plaintiffs. Obviously, the court could award damages to anyone else unless he came into

identified himself as a member of the class by proving who he was and his state of mind, and proved the amount of the dues, fees, and assessments which he was entitled to recover, or the amount of his damages from loss of employment. Just as obviously, however, members of the purported class without notice of the litigation were not in a position to assert such rights; nor would it be practical, even with notice, for persons residing in Illinois, Indiana, Ohio, Missouri, the District of Columbia, Virginia, Kentucky, Tennessee, Louisiana, Mississippi, North Carolina, South Carolina, Alabama, Florida, and elsewhere to assert such rights in the Superior Court of Bibb County, Georgia. The court in its decree felt impelled to state that although it was adjudicating the monetary claims of three plaintiffs it was not adjudicating monetary claims for any others. R. 107. The fact that such statement was necessary reveals the impropriety of maintaining this case as a class action. If the court cannot adjudicate the claims of the entire "class," then the class device is not properly used.

In *Davies v. Columbia Gas & Electric Corp.*, 151 Ohio St. 417, 86 N.E. 2d 603 (1949), which was an action by a plaintiff purporting to represent 700,000 natural gas consumers in the State to recover damages for fraud for secretly diluting natural gas with inert gas, thereby increasing the rates, the court held that a class action would not lie. Similarly, in *Syres v. Oil Workers Union*, 257 F. 2d 479 (5th Cir., 1958), it was held that since "wages are, of course, separately and individually earned," a class action to recover loss of wages could not be maintained. Similarly, see *Pemberton v. Board of Education etc. of Toledo*, 67 Ohio App. 175, 36 N.E. 2d 170 (1940), in which the court pointed out the wage claims were in separate amounts, for different kinds of services, different hours, different rates, and different responsibilities; that some had lost time, some overtime; and each being a claim for money, the defendant may have a special defense as to each which it is entitled

to make in a jury trial. Similar holdings were made in *Schatte v. International Alliance of Theatrical Stage Employees* (9 Cir. 1950) 183 F. 2d 685, and in *Mason v. National Bronze and Aluminum Foundry*, 159 Ohio St. 112 N.E. 2d 15.

In *Weaver et al. v. Pasadena Tournament of Roses Association et al.*, 32 Cal. App. 2d 833, 198 P. 2d 514 (1948) which was an action by the plaintiffs on behalf of themselves and others similarly situated to recover a statutory penalty for wrongful refusal of admission to the Rose Bowl where the operators advertised 7,500 tickets for sale to the general public and closed the box office after selling only 1,500, the Court held that an interest in a common question of law was not a sufficient "community of interest" reason to authorize a class action because determination of the question "would still leave to be litigated the right of each other person to recover on his statutory claim in the event of whether he *in reliance* upon the advertised sale, standing in line, received an identification stub, was denied admission before the promised 7,500 had been sold, presented himself at the Rose Bowl as a 'sober moral person,' demanded admission, tendered the price, and . . . his actual damage as well as was refused, entitling him to recover the statutory penalty of \$100." (Italics supplied)

The Court said further:

"In the present case there is no ascertainable community of interest such as the stockholders, bondholders or creditors of the organization. Rather, there is only a large number of individuals, each of whom may or may not have the care to assert, a claim against the operators of the Rose Bowl Game for the alleged wrongful refusal of admission thereto. . . ."

* See also, *Kentucky Home Mut. Life Ins. Co. v. Dulac* (6 Cir. 1951), 190 F. 2d 797; *Trailmobile Co. v. Whirls* (6 Cir. 1954) 154 F. 2d 866, *reversed* on other grounds, 331 U.S. 40, 91 L. Ed. 1007; *Weeks v. Bareco Oil Co.* (7 Cir. 1941), 125 F. 2d 84.

See also, *Young v. Klousner Cooperage Co.*, (1956), 164

The language of the Supreme Court of Georgia in a case involving different substantive issues, *Grand Chapter Order Eastern Star v. Wolfe*, 172 Ga. 346, 349, is appropriate to the great number of diverse claims, claimants, and opinions sought to be included in the class here. In that case the Court, dealing only with claims for wounded feelings, said:

"But is there such a common nexus binding all of these thirty petitioners for damages that it can be said that each one of them having a common interest in the subject-matter, suffered the same injury to his feelings, so as to be compensated in the same amount for injury to his or her reputation? As injury to personal feelings is as variant as the figures produced by the shaking of a kaleidoscope, and the injury to the reputation of one is in each case largely dependent on the particular nature of the reputation possessed by the petitioner, we can not say that the injury inflicted upon any one of the petitioners, so far as feelings and reputation are concerned, is identical to that of any or all of the others."

D. Plaintiffs Are Without Standing to Sue Any Defendant Union Except the One That Represents Their Craft.

There are nine railroad or terminal companies and fifteen labor unions named as defendants in the case.

Section 11 of the Union Shop Agreement provides in part:

~~"It shall be construed as a separate agreement by and on behalf of each carrier party hereto and those em-~~

489, 132 N. E. 2d 206; *Wilder v. South Carolina State Highway Department* (1955), 228 S. C. 448, 90 S. E. 2d 635; *Earle v. Webb et al.* (Asbury et al., Intervenor) (1936), 182 S. C. 175, 188 S.E. 798; *Horst Von Roebel v. Sesac, Inc.* (1955), 145 N.Y.S. 2d 697, aff'd 150 N.Y.S. 2d 152 (1956); *Pyper v. Mutual Home & Savings Ass'n* (1938), 35 N.E. 2d 736; App. dismissed, 134 O. St. 345, 16 N.W. 2d 424; *Cavanagh et al. v. Hutcheson et al.*, 140 Misc. Rep. 178, 250 N.Y.S. (1931), aff'd. 259 N.Y.S. 967; *Felten Truck Line, Inc. v. State Board of Tax Appeals* (1958), 183 Kan. 287, 327 P. 2d 836; *Burke et al. v. Illinois Bell Telephone Co.* (1952), 348 Ill. App. 549, 109 N.E. 2d 358.

ployees represented by each organization of said carriers as heretofore stated."

Accordingly, there are separate contracts between separate employers and fifteen separate labor unions which are involved, a large number of agreements.* One of the plaintiffs is "affected" by those agreements, and the other five plaintiffs by agreement:

The fact that the rights of the persons claiming the purported class arise out of different contracts with different contracting parties would seem sufficient in itself to prevent there being the class found by *Dinkes v. Glen Oaks Village, Inc.*, (1954), 132 N.Y.S. 2d 138; *Adelson v. Sacred Associates Realty Corp.*, 183 N.Y.S. 2d 265; *Pyper v. Mutual Home & Savings Bank of Dayton*, (1938), 35 N.E. 2d 736, appeal dismissed, 35 N.E. 2d 345, 16 N.E. 2d 424; *Kahlmeyer v. Green-Walsh Realty*, (1940) 23 N.Y.S. 2d 17, 27 N.Y.S. 2d 446, 35 N.E. 2d 138, aff'd, 40 N.E. 2d 650 (1942).

Since none of the complaining plaintiffs asks for or could use, any relief against any organization other than the Clerks, or could be given any relief against any other organization, and the agreements to which other unions and not the Clerks are parties cannot harm them, they have no standing to sue any organization but the Clerks. The situation is similar with respect to the relief sought which none of the plaintiffs is employed, even though they have agreements with the Clerks; a union shop established by an employer that is not a plaintiff's employer cannot cause the plaintiffs no legally recognizable harm. It is therefore that defendants against whom none of the plaintiffs can or can obtain relief should be dismissed from the

* It cannot be assumed that the total number of agreements is fifteen since the record does not show that each union represents only one carrier on each carrier.

Lankford v. Dockery, 87 Ga. App. 813, 75 S.E. 2d 340, 341. One may not have judicial redress for the benefit of a class, in respect of a matter in which he is without interest, right, or duty. *Harrigan v. Pounds*, 246 N.Y.S. 363, 146 Misc. 666 (1933); *Newark Twentieth Century Taxicab Ass'n v. Lerner*, 11 N.J. Super. 363, 78 A. 2d 315 (1951); *State v. Laramie Rivers Co.*, 59 Wyo. 9, 136 P. 2d 487 (1943).

Thus even if a class suit is proper, it must be limited to employees within the craft or class of clerks employed by the two defendant railroads by which plaintiffs are employed. The operation and activities of the defendant unions differ widely, and plaintiffs may complain only of those that concern them. The record shows that the defendant unions have different fees and dues. The publications they issue differ substantially. Some have death benefits, others do not. They contribute to legislative and political activity in widely different degrees and each in its own particular fashion. Some do not participate at all in some of the activities of which plaintiffs complain. Numerous other differences are described below (Point VIII). Those who would represent a class may sue only with respect to matters that affect them, and not with respect to matters that affect only others. See *Harrigan v. Pounds*, 265 N.Y.S. 676, 684-6, 239 App. Div. (1932), where the Court said:

"It seems to us that with regard to the sixty-three deposit agreements to which none of the plaintiffs is a party, they have no capacity to sue to rescind for a fraud perpetrated on parties to an agreement, who claim no fraud and, as far as the record is concerned, are perfectly content with their investments.

"In attempting to maintain this action and to meet this weakness in their position as to the remaining sixty-three agreements, the plaintiffs allege in their complaint, which is upon information and belief, that other persons, though not named as parties herein and

holding and owning similar bonds and ce deposit, have expressed their desire to join in this action, and inasmuch as such persons are numerous and it would be impracticable to call all before the court in the first instance, and as said persons have common interest with the plaintiffs and are similarly situated, this action is brought by the plaintiffs herein on behalf of the class in a representative capacity on behalf of all persons and holders similarly situated. . . .

"The appellants point out that this is the contentment in all the papers before the court but the plaintiffs attempt to justify their suit to remove the committeemen under sixty rate and distinct agreements to which none of the parties is a party and under which none of them has claims, or interest."

E. Plaintiffs May Not Claim Relief for Others They Claim for Themselves.

The only relief claimed by plaintiffs for themselves is the only relief they could claim upon, the basis of which is injunctive relief against the union shop agreement for the return of dues and fees they had paid pursuant to the agreement. Included in the purported "class" of persons who have undertaken to represent are former employees of defendant railroads whose employment has been terminated for failure to meet the condition of the agreement. Although the order of the Superior Court is clear in this respect, it apparently intended to deny also the rights of such persons to damages, and the amounts thereof for such loss of employment, tortious and perhaps even punitive,—damages which the plaintiffs do not claim for themselves.

The claims of plaintiffs and of any persons who may be added as a result of enforcement of the collective bargaining agreements are quite different. It is well established that plaintiffs in a class action may not seek relief for members of the alleged class which they do

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themselves and which they are not entitled to recover themselves. *Brown v. Bd. of Trustees*, 187 F. 2d 2 (5th Cir., 1951); *Martinez v. Maverick County Water Control and Imp. Dist.*, 219 F. 2d 666 (5th Cir., 1955); *P. v. Bd. of Educational Lands and Funds*, 103 F. Supp. (D.C., N.D. Nebr., 1951). For the rights to be established in a class suit for the benefit of those for whom the suit brought can rise no higher than the rights of the parties. *Young v. Klausner Cooperage Co.*, 164 O. St. 132 N.E. 2d 206 (1956); *Davies v. Columbia Gas & Electric Corp.*, 151 O. St. 417, 86 N.E. 2d 603 (1949); *State v. Annie Rivers Co.*, 59 Wyo. 9, 28, 136 P. 2d 487, 492 (1944); *Matthews v. Landowners Oil Ass'n et al.*, (Tex. Ct. App. 204 S.W. 2d 647, citing 39 Am. Jur. 921).

Of course, this aspect of the Order below is erroneous for the additional reason discussed in Point VI, C, S, that individual claims in individual amounts based on individual facts may not be the subject of a class action.

VII. THE APPELLANT UNIONS ACTED WITHIN THEIR AUTHORITY IN EXECUTING THE UNION SHOP AGREEMENTS

The trial court found that the defendant labor organizations acted "without authority from the employees represented by them" and "without affording said employees any opportunity to express themselves with respect thereto," when they entered into the union shop agreements involved. R, 101-2, 230. This finding affords no proper basis for the order enjoining enforcement of the union shop agreements.

Although paragraph 12 of the Stipulation (R. 168) contains statements in substance the same as the quoted phrases, it qualifies the statement concerning absence of authority from the particular employees with "other such authority as might be implied from each labor organization, the defendant being the collective bargaining representative for the purposes of the Railway Labor Act . . .

states also that "the usual processes of unions in determining collective bargaining followed," a further qualification omitted.

The authority of the defendant unions to bargain representatives for the respective classes of the employees of the defendant matter of law includes within it the authority to make a union shop agreement. Once a union is a majority of the employees in a craft or industry, it is a representative for purposes of the Railway Labor Act. A union without any specific conferral of authority over the employees represented has the right to make an agreement authorized by the Railway Labor Act.

In the field of collective bargaining, the authority of the collective bargaining representative is determined not merely by the authority of the craft intend to confer, as in the ordinary principal and agent, but by the provisions of the statutes. *J. I. Case v. N.L.R.B.*, 321 U.S. 252; *Telegraphers v. Ry. Express Agency*, 321 U.S. 252. A collective agreement made by the collective bargaining representative governs each individual, regardless of whether he accepted or rejected the terms or wanted the agreement changed. *Order of R. Telegraphers v. Ry. Express Agency, supra*.

Numerous authorities, and the reasons for them, upholding the authority of a collective bargaining representative to make such agreements as those involving compulsory retirement of conductors at the age of 40 without specific authorization from its constituents are applicable here. See *Lamon v. Georgia S. Ry. Co.*, 1955, 212 Ga. 63, 68-69, 90 S.E. 2d 611; *Mullans v. Kans. Okla. & G. Ry. Co.* (E.D. Mo., 1956), 129 F. Supp. 157, 159, affd. (10 Cir. 1956), cert. den. 351 U.S. 918; *Goodin v. Clinchfield Ry. Co.*, 125 F. Supp. 441, affd. (6 Cir. 1956), 229

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(E. D. Okla. 1955).
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229 F. 2d 578, cert.

den. 351 U.S. 953. And the Supreme Court of No-
lina in its decision in *Hudson v. Atlantic Coast*
Road Co., 1955, 242 N.E. 650, 663-665, 89 S.E. 2d
451, applied the same reasoning and authority
that no specific authorization from members of
or class was prerequisite to a union's authority
into a union shop agreement. The Supreme Court
Carolina said:

"Appellees further contend, and the court
facts, that defendant unions, through their
cers, acted arbitrarily and in disregard of t
of the employees of the respective crafts o
In last analysis, the only evidence support
findings is to the effect that the chief offic
fendant unions, notwithstanding known opp
some employees to the making of a union sh
ment, made demands on defendant carrier
agreement without ascertaining by refer
otherwise the wishes of a majority of the
within the respective crafts. Admittedly,
unions since 5 February, 1951, had been ende
negotiate a union shop agreement with defer
rier. The evidence dispels any suggestion tha
ant unions' efforts to obtain a union shop a
were conducted in secrecy; rather, the con
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arose from the fact that the efforts of the b
agents were well known. . . .

"The inquiry narrows to this question: Mus
gaining agent, before making demands for
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ence thereto and be governed by the wishes o
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"We are constrained to hold that such re
was not required.

"It must be concluded that the intent of
as presently expressed in the *Railway Labor*
that the employees in a collective bargaining
ing selected their representative, authorized

representative to negotiate and act for the Union Shop Amendment, by its terms, the negotiation of a union shop agreement is a subject for collective bargaining by the union or such collective bargaining unit. The union shop requirement is obligatory under the agreement only as long as the union remains such bargaining agent. Should the collective bargaining unit desire to change its bargaining agent, or none, the procedure is available. 45 U.S.C.A. 152. The union so chosen is at liberty to reopen and renegotiate the collective bargaining agreement, eliminating the shop provision. The injunction in question is in effect since 23 April, 1953. Plaintiffs similarly situated have had ample opportunity to elect representatives, if such was desired by the respective crafts. But no demonstration of bargaining representation was made since 1946. The conclusion reached in *Goodwin v. Clinchfield R.R. Co.*, E. D. Mo., 123 F. Supp. 441; *Austin v. Southern Railway Co.*, 123 F. App. 2d 292, 123 P. 2d 39."

Likewise squarely in point is *Cook v. Sleeping Car Porters*, 1958, Mo., 309 S.W.2d 817, certiorari denied, 358 U.S. 817, where the Supreme Court of Missouri in upholding a union shop agreement against a similar attack, said:

"They say that the contract was executed without notice to them or that they should be heard on the question. We find no basis for the act or in the cases of such a nature. In *McMullans v. Kan-Okla. & Gulf Ry. Co.*, 229 F. 2d 50, certiorari denied 351 U.S. 1450, it was held that notice to individual conductors was not required when the union agent and the carrier so amended the contract as to provide for compulsory retirement.

"The courts cannot write a requirement into the Act, and so far as we can see, no requirement is required under the present circumstances."

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 hed is in accord with
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 n Pac. Co., 50 Calif.,

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 S.W. 2d 579, 587-588,
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it was negotiated and
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Gulf Ry., Inc., 10 Cir.,
 351 U.S. 918, 100 L. Ed.
 individual complaining
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So far as we know, the *Hudson* and *Cook* ca-
 only decisions by appellate courts squarely in po-
 involving the specific issue of the necessity of
 ascertaining the wishes of the members of the
 taining specific authority from the members of
 as a requisite to the validity of a union shop
 under the Railway Labor Act. For other cases
 various provisions of agreements found objec-
 some members of the craft or class, in which the
 rejected the argument that the agreement was
 cause of the absence of notice to, or specific au-
 by, the members of the craft or class, see *Mars*
tral of Georgia Ry., D.C. S.D., Ga., 1956, 147 F.
 858; *McMullans v. Kansas, Okla. & Gulf Ry.*
 Okla., 1955, 129 F. Supp. 157, 159, affirmed 10
 229 F. 2d 50, certiorari denied 351 U.S. 918; *Na*
tem Federation No. 91, W. D. Ky., 1955, 127 F.
 889-890; *Goodin v. Clinchfield Railroad Co.*, 1
 Supp. 441, 452, affirmed 6 Cir., 229 F. 2d 578
 denied 351 U.S. 953; *Austin v. Southern Pac. C*
 Calif. App. 2d 292, 297, 123 P. 2d 39, 42; *Lamor*
Southern Ry. Co., 1955, 212 Ga. 63, 68-9, 90 S.
 662-3.

Plaintiffs will presumably, as they have done
 cite *Steele v. L. & N.R. Co.*, 323 U.S. 192, 65
Graham v. Southern Ry. Co., 74 F. Supp. 663, 3
 70 S. Ct. 14; *Bro. of R. Trainmen v. Howard*, 3
 72 S. Ct. 1022, to show that this Court has held
 lective bargaining agreements beyond the auth-
 lective bargaining representatives. Those case
 stances of collective bargaining representati-
 agreements that employers take work away fr-
 employees who had been performing it and
 assign the work to white employees. In those
 held that such agreement was in violation of
 tion of the representative to represent the en-
 represented, fairly and impartially. In those

selves, however, this Court expressly recognized that a collective agreement may have consequences disadvantageous to the interests of some members of the craft, and that such consequences would not affect the validity of the agreement. For example, in the *Steele* case, after holding invalid the agreement there involved, this Court stated that "this does not mean that the statutor, representative of a craft is barred from making contracts which may have unfavorable effects on some members of the craft represented." 323 U.S. 192, 203. Those cases, as stated by Judge Hand in the first *Ottens* case, are "toto coelu" different from the question we have here. 205 F. 2d 58, 60.

The test uniformly applied in such cases is whether the representative has taken action which it thinks is for the benefit of the craft as a whole, not whether any individuals are adversely affected, and not whether the representative's judgment is a sound one so long as it is sincere. *Ford Motor Co. v. Huffman*, 345 U.S. 330; *Haynes v. United Chemical Workers*, 190 Tenn. 165, 228 S.W. 2d 101; *Aeronautical Lodge v. Campbell*, 337 U.S. 521; *Hartley v. Brotherhood*, 283 Mich. 201, 277 N.W. 885. That it is a proper objective of collective bargaining for a representative to seek a union shop agreement is expressly provided in the Act under consideration. Section 2, Eleventh of the Railway Labor Act, under which the defendant unions are established as the collective bargaining representatives, provides:

"... any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—

(a) to make agreements, requiring, as a condition of continued employment, that ... all employees shall become members of the labor organization representing their craft or class."

There is no room here for statutory interpretation; so far as the question here is concerned, no statute could more clearly authorize the union to do what it did and what is here challenged as not within its authority as a statutory collective bargaining representative.

Even before that legislation, and but for the prohibitions of the pre-existing legislation, it was universally recognized that a union security agreement was a traditional objective of collective bargaining. In *Colgate-Palmolive-Peet Co. v. N.L.R.B.*, 338 U.S. 335, this Court stated (at pp. 362-3):

"One of the oldest techniques in the art of collective bargaining is the closed shop. . . . Congress knew that a closed shop would interfere with freedom of employees to organize in another union and would, if used, lead inevitably to discrimination in tenure of employment. . . . It is not necessary for us to justify the policy of Congress. It is enough that we find it in the statute. . . . The Board cannot ignore the plain provisions of a valid contract made in accordance with the letter and spirit of the statute and reform it to conform to the Board's idea of correct policy."

Plaintiffs argue also that because prior to January 10, 1951, a union shop was prohibited in the railroad industry by the Railway Labor Act, somehow it is beyond the authority of a collective bargaining representative now to negotiate such an agreement although it is no longer prohibited. The reasoning behind this argument is somewhat obscure and difficult to follow. It seems to be directed toward an argument that some of the defendant unions became collective bargaining representatives on the railroad defendants during the 17-year period between 1934 and 1951 that a union shop in the railroad industry was prohibited. R. 169-71. The argument seems to proceed that no one can now know what collective bargaining representative the craft would have chosen had it known that such representative would some time no longer be pro-

hibited from seeking a union shop, and the conclusion seems to be drawn that since the representative chosen could not legally have obtained a union shop agreement it cannot be supposed that the same representative would have been selected or accepted if a union shop agreement were then within the ambit of permissible objectives.

This may be so, or it may not be so, as plaintiffs are to argue. The ultimate conclusion they draw is that before the representative has not been authorized to seek to obtain a union shop. Without going into details, enough to point out that the scope of the authority ascertained primarily from what the Railway Labor Act provides; at least it includes what the Railway Labor Act provides shall be included within the scope of collective bargaining. And indubitably the Railway Labor Act authorizes a collective bargaining representative to seek a union shop agreement. To be sure, some members of the craft may prefer not to have such an agreement. But when an agreement became a permissible objective on January 10, 1951. Less than a month later the appellant union served a formal notice under section 6 of the Railway Labor Act that they wanted such an agreement. And over two years later they obtained such an agreement with the railroad defendants. During that period none of the plaintiffs made any effort to have any change made in the accredited collective bargaining representative, and no such effort has been made in the additional period of five years since then. Plaintiffs' argument, if we understand it, seems to be that Congress having legislated on the authority of collective bargaining representatives and prohibited them from obtaining a union shop agreement without authority to amend such prohibition.

Any time a majority of the craft is dissatisfied with their representative is doing or has done, they can seek to obtain a different one. No such effort has been made in more than nine years since the defendant unions started seeking a union shop agreement or in the seven years since they obtained such an agreement with the railroad.

defendants. And if any such effort should be made and should be successful, the representative so chosen would have authority to enter into a union shop agreement, whatever the preference of any individual members of the craft. Railway Labor Act, section 2, Eleventh; *Order of Railroad Telegraphers v. Railway Express Agency*, 321 U.S. 342.

VIII APPELLANTS WERE DENIED DUE PROCESS OF LAW BY FINDINGS, A JUDGMENT AND A DECREE BEING ENTERED BEYOND THE JURISDICTION OF THE COURTS BELOW.

A. The Findings

In the final "Findings, Conclusions, Order, Judgment and Decree" the trial court made a number of findings of fact. It made the same findings of fact with respect to all the labor organization defendants, although the evidence and stipulation with respect to those defendants differed materially, and much of the matter in the stipulation cannot be attributed to any particular labor organization defendant. In addition, some of the findings have not even a suggestion of support in the record.

An examination of the final order and stipulation, upon which much of the findings is predicated, shows how inadequate is the support for much of what the court found.

In paragraph 1 of the final order the court found that the individual defendants represent all the members of the labor organization defendants. R. 101. But there is nothing anywhere in the record to show who the individual defendants are or what authority they have or are otherwise in a position to represent anybody. R. 230, 237.

In paragraph 4 of the order the court found that the union shop agreement imposed a condition of employment or continued employment. R. 231. There is absolutely nothing in the record to show that the union shop agreements impose any condition of employment. R. 205. The Railway Labor Act permits a union shop agreement imposing a condition of continued employment, and the agreements themselves very explicitly impose only a condition of continued employment and not a condition of employment. R. 205.

In paragraph 5 of the order the trial court found funds collected by the labor organization defendants plaintiffs were used to support the political campaign candidates for federal office and that the funds were used both by each of the labor union defendants separately and by all the labor union defendants collectively in concert among themselves and with other organization parties to this action, and that such candidates were proposed by the plaintiffs and the class they represent. R. 103, 231. But there is nothing in the record to show that any of the labor organizations so use any funds even if there were any such showing, there is nothing in the record to show that such candidates were opposed by plaintiffs or the class they represent. Furthermore, contributions to such campaign funds would probably be claimed to be in violation of the Federal Corrupt Practices Act, and plaintiffs expressly disavowed any reliance on a violation of the Corrupt Practices Act. R. 232. In the same paragraph the trial court found that the said funds were so used and used also to support other candidates for public office by direct and indirect financial contributions both by each of the labor union defendants separately and by all of them collectively. But as we show below the stipulation states only that "some" of the local lodges "some" of the labor organization defendants spend money in state and local elections; there is nothing in the record to identify further such local lodges or to show that any of them are local lodges to which any of the plaintiffs, intervening plaintiffs or members of the purported class they represent would pay any funds under the union agreement or that any of said local lodges are local lodges of any labor organization that represents any of the plaintiffs or intervening plaintiffs or members of any purported class. Further, none of the defendants are local lodges.

In paragraph 6 of the order the trial court found that the labor organization defendants used the funds collected from plaintiffs and the members of the purported class to impose upon plaintiffs and the class they represent.

well as upon the general public, conformity" to "certain political and economic doctrines, concepts and ideologies" and conformity to "legislative programs". R. 103, 233. There is nothing in the record to show that any of the union defendants impose on plaintiffs or anyone else conformity to any doctrines, concepts, ideologies, or legislative programs. and the trial court made no factual findings to support such conclusion. Indeed, under the terms of the union shop agreements themselves the labor organization defendants could not impose any conformity to any doctrines or concepts or programs. The agreements themselves, as well as Section 2, Eleventh, provide that if membership in the labor organization is denied or terminated for any reason other than the non-payment of uniform dues, fees, and assessments (not including fines and penalties), the union shop agreement would not be applicable to any such person. Under those provisions, no one can be required to conform to any ideologies or concepts or programs; indeed, he is free to oppose them. See *Allen v. Southern Ry. Co.*, 249 N.C. 491, 107 S.E. 2d 125.

In paragraph 10 of the order the court held that "the labor union defendants, by their commingling of funds used for collective bargaining purposes and activities and those used for the complained of purposes and activities . . . have made it impossible to segregate the amount of dues collected . . . which are . . . used for collective bargaining purposes from those which are . . . used for the complained of purposes and activities. . . ." R. 104, 236. There is simply nothing whatever in the record to show what books or accounts are kept by the labor organization defendants, or to show that they commingle any such funds or any other funds, or to show that anything any of the labor organization defendants has done has made it impossible for plaintiffs to do anything, or to show whether it would be impossible or difficult to ascertain what amounts of funds they expend for any particular purpose.

Obviously, the principal support for the findings of the court must have been the facts and conclusion contained

in the stipulation. We think it plain that the trier took every item in the stipulation which might be applicable to one or more of the defendants, and those questions with respect to which it cannot be determined whom the stipulation is applicable, and every item introduced in the record other than through the stipulation which might be applicable to one or more of the defendants, and treated all such material as proper in respect to all the union defendants. The same principle exists with respect to findings made concerning the plaintiffs. For example:

Paragraph 21 of the stipulation of facts states: "some of the legislative and political activities referred to . . . are carried out by some of the individual local labor unions . . . and in some situations . . . will be carried out on a cooperative basis." R. 177. There is nothing in the stipulation which activities are referred to or to identify the local lodges that engage in them, or even to show, if the local lodges were identified, that any of them were the lodges to which any of the plaintiffs or members of the purported class would be required to pay dues. Further, there is nothing to show the situations in which the activities would be carried out on a cooperative basis or by what local lodges such cooperation would be conducted. In the same paragraph it is stipulated that "in some instances" the financial support for the legislative and political activities is derived from not only the local lodges but the national organization; there is nothing to show what those instances are or what organizations are involved in them. But the foregoing findings are of this as established for all labor organization defendants and all their local lodges.

We do not know to what extent the courts below held that the plaintiffs rely upon the payment of death benefits from union funds. But the stipulation states only that the "union defendants maintain death benefit funds" without further identifying them, and states further that "in some instances" benefits are paid on

eral funds and "in some instances" are payable only to beneficiaries of members in good standing as of some time ago. R. 178. There is nothing in the stipulation to identify the labor union defendants referred to or to identify either of the instances referred to.

Paragraph 24 of the stipulation provides that the labor union defendants received the literature of the AFL-CIO. R. 178. There is nothing in the stipulation to show that the members of the labor organization defendants received such literature. Yet it was indicated below that such literature constituted a portion of the imposition of "political and ideological conformity." R. 103.

Paragraph 29 of the stipulation states that Railroad Labor's Political League received direct grants into its "educational" fund from the general funds of the union defendants. R. 182. But it is plain from the very next paragraph of the stipulation that except for trivial and insignificant amounts, obviously nothing more than corrections of bookkeeping entries, only three of the labor organization defendants have ever contributed money to RLPL's educational fund. The sentence following the stipulation in paragraph 30 (R. 183-4) again states that contributions to that fund were received from local lodges of labor union defendants, but there is nothing in the record to indicate that any of such local lodges are local lodges to which any of the plaintiffs or members of the purported class would be required to contribute. Other portions of the stipulation refer specifically only to certain organizations or except certain organizations, yet the court below made no distinction among them concerning any of its findings. See, e. g., paragraphs 32, 46, 48, 58-64, 185, 189, 192-5.

Similarly, we point to a few instances of the evidence that was applicable to only one, or more but less than all of the labor organization defendants, to show the impropriety of the court making identical findings with respect to all the labor organization defendants. Extensive exhibits were introduced into evidence, to which appellants

could not and did not object, concerning the State Labor Council. P. Exhs. 305-312. The filiation of the local lodges affiliated with that Council was also introduced into the record. 734). A few of such local lodges are affiliated with the defendant labor organization. Yet there is not a suggestion that any of such local lodges are in which any of the plaintiffs or any members of the alleged class would pay any funds under the agreements. Indeed, since the local lodges are in Louisiana, it would appear quite certain that none of the plaintiffs would pay any funds to any of those lodges of which they are employed or live in Louisiana.

The trial court gave no indication of what material it considered outside the stipulation it relied on for any of its findings. So in directing our attention to what material the trial court did rely on we consider the material the plaintiffs rely on.* Plaintiffs stated below, and we will state here, that one of the principal types of material on which they rely are the publications of the defendant labor organizations by which it is alleged such publications subject the plaintiffs to "brain washing." Pursuant to the stipulation, we furnished the plaintiffs copies of all the monthly publications of all the defendant labor organizations for a period of two and one-half years, R. 199. These publications, say the plaintiffs, are a principal instrument of imposing political, economic, and legislative conformity. But when we look at the publications introduced from this vast mass of material we find great differences between what plaintiffs consider relevant concerning one organization and what they consider relevant concerning other organizations. If the plaintiffs had ample material, they could find nothing at all in any publication.

* Obviously the trial court did not study the entire case in the fleeting instant between the close of oral argument and the merits and the announcement of his decision, or in the instant between the close of argument on the proposed stipulation and the announcement that he would sign it as presented.

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the Masters, Mates and Pilots or the Marine Engine
Beneficial Association of which to complain. In two a
one-half years of issues of the Railroad Telegrapher th
could find only a list of candidates endorsed by RLPL
the 1956 election. Exhibits 283-5. An examination of
exhibits introduced from the various journals shows gr
differences in what plaintiffs could find to complain
concerning the contents of those publications. Almost
the material from those publications introduced by a
pellants as exhibits consisted of tables of contents or he
lines or suggestions for contributions to various charita
organizations or suggestions for compliance with safe
practices and the like, to show that the scattered items
troduced by plaintiffs, assuming them to be objectionab
were but trivial portions of the whole. E. g., D. Exhs. 1
124, 29-30, 34, 38-44, 54-74, 78-88, 92-101, 106-8, 111-2.

A similar situation exists with respect to material int
duced from convention proceedings of the labor organi
tion defendants. Although we furnished a mass of m
terial concerning those conventions (R. 200-1), plainti
found but little they thought significant to their ca
Again, with respect to some organizations, nothing or v
tually nothing was introduced. And what was introduc
varied tremendously from organization to organization
Much of what plaintiffs offered consisted of speeches ma
by guests at the convention; it is difficult to understa
how any of that material, consisting simply of what son
body else said to a convention, can prove anything
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all of what we offered from those proceedings consisted
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proceedings was the material introduced by the plainti
and that the overwhelming mass of what occurred c
sisted of subjects of direct concern to the functioning
a labor organization.

But despite the great differences in the material in
record applicable to the several labor organization

fendants; and despite the fact that with of the material it is impossible to tell tion it applies or whether any of the plain of the purported class would be affected made findings of fact uniformly applicabl organization defendants, with no subsidia ing how any of the conclusions was reasomatic that there must be some basis in a a finding else it must be set aside as *Ohio Gas Co. v. Public Utilities Comm.*, And of course the requirements of due p state judicial processes as well as legisla action. *Brinkerhoff-Faris Co., v. Hill*, 2 682.

B. The Decree.

The substance of the errors in the decr is discussed in the foregoing sections of few additional comments concerning c errors may be helpful.

In the fourth subparagraph of paragra (R. 104) the trial court held the union sh be in violation of the constitution, the law policy of Georgia and contrary to the law in which the defendant railroads operate were specified as those which the agreem no such provision could be specified. Above, the law and public policy of Geor in Code of Georgia, Title 54, Chapter 54- Section 54-901 (a), specifically provides th unlawful under Georgia law to enter i union shop agreements in the railroad in

Furthermore, in certain other states in ern Railway operates it has been held tha ment here involved was lawful in those s ers of such states it has been held that ap cal in terms (except for the name of the r were lawful in those states. Surely it c

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it cannot be argued

that the courts of Georgia have authority to over-
courts of other states as to what is the law in those
and give relief to residents of those states which the
of those states have held such persons were not en-
have.

For example, in *Jarrett v. Southern Railway Co. and Brotherhood of Maintenance of Way Employees*, Court of Common pleas, County of Oconee, South Carolina, the same contentions were made as here. This was decided on August 5, 1958, after a trial, and is officially reported. In that case the court held that the to-work law of the State of South Carolina did not in every terms apply to the very same contract as is involved, because (unlike the Georgia statute) the South Carolina statute is not retroactive and excepts union agreements made before its enactment, and the contract was made before the enactment of the South Carolina right-to-work law. The court held also that even though there has been no express exception the South Carolina law does not apply because it was superseded by valid federal legislation, but the primary holding was that the contract was valid under South Carolina law itself. The same was made in *Sams v. Bro. of Ry. Clerks* (4 Cir. 1953, 223 F. 2d 263. For similar situations, in which either an identical contract or other contracts having the same provisions but involving different railroads have been held valid, see *Hudson v. A.C.L.*, 242 N.C. 650, 89 S.E. 2d 351 U.S. 949; *Allen et al. v. Southern Ry. Co.*, 249 N.C. 491, 107 S.E. 2d 125; *Moore v. C. & O.*, 273, 93 S.E. 2d 140; *In the Matter of Florida East Coast Railway Co.*, U.S.D.C., S.D. Fla., No. 4827-J, C. 100, June 25, 1953, not officially reported, unofficially reported, 32 L.R.R.M. 2534; *Atwell, On Behalf of Himself and Other Employees of the Southern Railway Co. v. Southern Railway Company and International Association of Machinists et al.*, not reported, Superior Court, Guilford County, North Carolina, Greensboro Division, decided January 21, 1959.

Plaintiffs may argue that there are states in which there have not been such holdings, but, if so, it is because the question has not been litigated in those states. In every state where the question has been litigated, the validity of the holding has been upheld.

In the fourth subparagraph of paragraph 1, the court held also that the union shops violate their enforcement, and the use of the funds for such agreements as theretofore described violate the United States Constitution under the authority and violate plaintiffs constitutional rights of freedom of thought, freedom of speech, and freedom of assembly.

We have shown above that the acts of the United States Constitution referred to in paragraph 1 below impose no restrictions on what the unions may do. The court made no statement that plaintiffs can point to nothing in the Constitution that interference by any defendant with any person's right to speak, publish, or vote. Certainly there is no interference under the terms of the Constitution; as we have shown above, both the Constitution itself and Section 2, Eleventh limit the union shop agreement to a requirement of uniform dues, fees, and assessments for membership. A denial or termination of membership in a union for any reason other than non-payment of uniform amounts would leave persons so treated in violation of the requirement of the union shop. Furthermore, the unions and the railroads have done this under the cloak of federal authority. Plaintiffs' contention of unconstitutionality is predicated on the fact that Section 2, Eleventh having superseded state law, but elsewhere, there was no state law to supersede. Section 2, Eleventh had never been enacted in Georgia and has been perfectly lawful under Georgia law. The acts of the unions here involved to be enforced.

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In paragraph 9 of the order (R. 104) the tri-
found that the injury to plaintiffs from the comp-
conduct will be irreparable. It made no such find-
respect to the persons found by it to constitute a c-
resented by plaintiffs. There is no other finding
that could furnish any ground for injunctive rel-
injunctive relief was granted to plaintiffs and
ported class they represent. With respect to
ported class, there was thus no basis whatever fo-
tive relief. And even with respect to the named p-
the finding of irreparable injury is contradicted
record. The record shows that the greatest an-
damage even claimed by any named plaintiff, co-
period of more than five years, was \$158.25; su-
age, for such period, for which judgment was e-
the decree, could hardly be considered irr-
R. 106, 203-4.

In the final order, the trial court enjoined not
railway company defendants and the labor org-
defendants but also the individual defendants from
ing the union shop agreements in their entirety,
with respect to the plaintiffs and the purported
with respect to everyone, whether or not includ-
group the court found to constitute a class. R.
is difficult to understand how plaintiffs could ha-
for such relief, or how the court below could have
it, except that plaintiffs included it in their
order. The pleadings ask for no relief for anyone
than plaintiffs and members of the alleged class
they represent. Further, the record does not s-
any of the individual defendants are or any act-
of them has taken or threatened to take nor the r-
any such action. There can be no legal basis fo-
ing persons simply because their names happen
cluded in the caption of pleadings. Furthermore,
order so sweeping, it overrules the courts of oth-
in granting relief to persons who live and work
states whose courts have held they are not entitl-

very relief asked for in this case and granted below. For example, in the *Jarrett* case discussed above, a South Carolina court held that Jarrett was not entitled to the very relief given him by the court below. In the *Allen* case, even the trial court granted relief to the named plaintiffs in that case but held that no one else was entitled to relief and that to obtain relief anyone else would have to come personally into court, although that case also was brought as a class action. And the Supreme Court of North Carolina held that even the named plaintiffs were not entitled to relief. It is shocking to suppose that the courts of Georgia will undertake to overrule the courts of other states as to what is lawful in those states and will give relief to citizens of North Carolina and South Carolina, for example, which the courts of those States have held such persons were not entitled to have; and will do so not because it finds the courts of those states to be in error in interpreting and applying the law of those states, and not because it finds the law of Georgia entitles citizens of North Carolina and South Carolina to such relief, but because the law of some third state prohibits union shop agreements. In those two States the union shop agreement involved was the very same agreement involved here. The situation is virtually the same with respect to the decisions mentioned above in other states where the contracts involved were not the identical contracts involved here but differed only with respect to the name of the railroads involved.

The trial court included a proviso to its injunction to the effect that the defendants might at any time petition the court to dissolve the injunction upon a showing that they are no longer engaged "in the improper and unlawful activities described above." Such proviso was error, and denied appellants due process of law, for a number of reasons.

First, the order contains no findings or adjudication that any activities that do not include the enforcement of the union shop agreements are improper or unlawful.

Certainly there is no finding, nor was it contended, that efforts by labor organizations to influence legislation they deem of concern to them, and the like, are unlawful. In such situation, the proviso and the order mean that we could petition the court to be permitted to enforce the union shop agreement only upon a showing that we no longer enforce it, a self-contradictory and meaningless order. If the proviso was intended to hold that any of the activities "described above" with relation to legislative or political or economic or ideological matters are improper or unlawful, the holding specifies and can specify no provision of law which any of them violates. The unions have always engaged in such activities, and never have any of them been held or declared unlawful. To a limited extent certain political activities are proscribed by the so-called Corrupt Practices Act, but it is not even argued in this case that a violation of any such act is involved.

C. The Monetary Judgment.

The final order awarded damages to three plaintiffs who had joined the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees under the terms of the union shop agreement and had paid said Brotherhood dues and either an initiation fee or reinstatement fee, said damages in each instance being in the amount of such fees and dues for the period since June 1953, approximately five years. The amount of such fee and dues ranged from \$133.50 to \$158.25, covering that period. R. 203-4.

Upon sustaining the motion to dismiss on February 4, 1957, the trial court announced that it would upon application enter a supersedeas order in favor of such persons as might become plaintiffs in error to review said order, upon posting a bond in the approximate amount of two years' dues. R. 243. On March 4, 1957, the trial court entered a supersedeas order in favor of the twelve persons who became plaintiffs-in-error, conditioned on said

persons, filing a bond in the amount of \$66.00 R. 243. All three persons awarded damages in the order had the opportunity to become plaintiffs-in-error and come under the supersedeas order, and thus to avoid the monetary damages awarded them. Two of the plaintiffs Cobb and Davis, were intervening plaintiffs and did not become plaintiffs-in-error and file a supersedeas bond. R. 14, 243. One of the three, plaintiff Street, an original plaintiff and became a plaintiff-in-error and did not file a bond. R. 1, 243. All three, instead of taking such action, became members of that Brotherhood and paid the fees and dues and continued paying the dues the aggregate amounts set forth in the order. R. 1. Having elected to make said payments and obtain the privileges and benefits of membership in the Brotherhood they cannot now be heard to argue that they should receive back the money they paid for the consideration which they elected to receive, and which is not returnable to the Brotherhood, instead of incurring the insignificant expense, if any expense at all were involved, of posting a bond in the amount of \$66.00.

IX. CONCLUSION.

We believe we have demonstrated a multitude of reasons why the judgment below should be reversed. There are numerous grounds on which this Court might reverse and remand for further proceedings to correct procedural errors or various substantive errors which would not dispose of the entire case. But we have shown that the contentions of plaintiffs are legally unsound, even construing the mass of evidence most favorably to plaintiffs. We submit that the proper disposition of this case by this Court is to reverse the judgment of the Supreme Court of Georgia and remand the case to that Court with instructions to reverse the judgment of the Superior Court of Bibb County with its remittitur to the Superior Court.

directing it to vacate its judgment and order of December 8, 1958 and to dismiss the case.

Respectfully submitted,

MILTON KRAMER
LESTER P. SCHOENE

SCHOENE AND KRAMER
1625 K Street, N. W.
Washington 6, D. C.

February 15, 1960

APPENDIX A**PROCEDURAL RULINGS IN THE TRIAL COURT DENIED APPELLANTS A
OPPORTUNITY TO DEFEND THIS CASE.****A. Procedural Rulings in the Trial Court.**

After reversal by the Supreme Court of Georgia of the trial court's dismissal of the complaint for failure to state a cause of action, the remittitur was received by the trial court on July 18, 1957. On July 22, 1957 it was made a judgment of the trial court and on the same day the union defendants filed their answer to the complaint as amended. Plaintiffs objected to the filing of said answer as being out of time without a showing of providential cause or excusable neglect. On February 18, 1958 the Supreme Court announced its ruling that it sustained said objection. No written order embodying said ruling was entered on the record.

On May 8, 1958, the union defendants and plaintiffs appeared before the trial judge for a pretrial conference. At said conference plaintiffs made an oral motion for an order of the court to order the union defendants which are labor organizations to produce books, writings, and other documents. Over the objection of the union defendants that they had had no notice of such motion and had not expected the subject to be raised, and after overruling the union defendants' request that consideration of such motion be deferred, the court granted the motion. B. 2. The materials ordered to be produced included "all books, records, papers, documents, books of original entry, ledgers, books, ledgers, vouchers, correspondence, files, minutes, diaries, memoranda, circulars, printed materials, and all other things which said defendants or any of their agents might have or over which they or their agents might have control or custody, 'showing or related to' any matter in which any member of any such organization might have been paid to any such organization 'or affiliates thereof and for purposes for which any such monies received' by such organization 'were or are being expended, including

any and all monies paid by each of the respective organizations to other organizations or individuals and the purposes for which such payments are being, or were made . . .", for the period since June 15, 1953. The defendant unions were further ordered to produce with said materials, officers or agents of said defendants competent and prepared to testify under oath concerning the "identity, nature, contents, accuracy, source, and purpose" of all said materials. R. 65-6, 222. The union defendants made two oral requests for rehearing and reconsideration of the order of May 8, 1958, and on May 30, 1958 filed a written motion which was treated by the court as including a request for rehearing, reargument, and reconsideration of the order of May 8, 1958; so treating it, on the same day it was filed the trial court denied said request. R. 222-3.

On August 14, 1958 a comprehensive stipulation was entered into by all parties. R. 165-205. In said stipulation the union defendants conceded virtually everything plaintiffs might contend concerning them and their associates and affiliates. Under that stipulation the union defendants undertook also to furnish, and furnished to plaintiffs, a huge mass of material, including much that was not within the compass of the order of May 8, 1958, and including voluminous material relating to organizations other than the defendants; the plaintiffs could offer in evidence any of such material and the union defendants would be precluded from objecting to the admission of any such material; the union defendants could not offer as evidence anything except additional portions of documents of which plaintiffs might offer only a part, but union defendants were required to advise plaintiffs, in advance of trial, of such additional portions of such documents of which plaintiffs might offer a part and if plaintiffs chose not to offer a part of such documents the union defendants could offer none of it. R. 163-4, 199-202. After the execution of the stipulation, the objections to the filing of the answer were

withdrawn on September 23, 1958, and the striking the answer was rescinded. R. 221.

The record in the trial court shows, but the court refused to include it in the Bill of Exceptions on the ground that it was irrelevant to any question that depositions were taken from officials of organizations which were read into evidence at the trial. That at the taking of said depositions from the lawyers representing the defendants were present, none of them made any objection to any question propounded by counsel for the plaintiffs and that they had any cross-examination. At the trial, the case rested, counsel for the union defendants by reason of the stipulation they were not offered additional evidence. R. 223.

At the close of all the evidence, including the production of more than 600 exhibits over a period of several days, the union defendants asked for oral argument on the merits on the basis of the record after the transcript proceedings should have been completed. The court denied said request and scheduled closing argument on the merits for November 20, 1958, before the transcript was completed. Argument was had on November 20, 1958. R. 224. At said argument counsel for the defendants again objected to oral argument being heard at that time. R. 224-5.

Immediately after the close of oral argument the court orally announced findings of fact. R. 225-6. The court then stated that it had reached the conclusion that the prayers for relief should be granted, and requested counsel for plaintiffs to prepare an appropriate order and furnish copies to the two groups of defendants in the court. R. 227. Counsel for the plaintiffs then stated they had been preparing an order for the previous day and offered it to the court. R. 227. Counsel for the defendants objected to being called upon to state objections to a proposed order he had never seen.

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court thereupon declared a short recess. R. 227. Upon the resumption of the hearing counsel for the union defendants objected to being required to present argument on the contents of the proposed order on such short notice, and the court thereupon adjourned for the usual luncheon recess of two hours and stated that immediately thereafter it would hear objections to the order as drafted by plaintiffs. R. 228. Upon the resumption of the hearing after said recess counsel for the union defendants again protested against having been given such short time to examine the proposed order and prepare and address argument to it. R. 228. Immediately after the conclusion of the argument on the proposed order the court announced that it would sign the proposed order as presented. R. 228.

B. Discussion

Preliminarily, it should be observed that the series of procedural rulings described above and in the Statement of Facts, was hardly calculated to afford these defendants a fair opportunity to defend the claims made against them. Certainly the combination of those rulings was grossly unfair; all the procedural rulings favored the plaintiffs in prosecuting this action to the detriment of the defense that these appellants could make. Indeed, almost any one of the rulings described would of itself be sufficient to hold that these appellants were denied due process. But the combination of those rulings makes it abundantly clear that after the Supreme Court of Georgia reversed the sustaining of the demurrer in the trial court, it was the determination of the trial court that the ultimate ruling would be against these appellants, no matter what rulings need be made to facilitate that end.

We start with our answer being stricken for having been filed out of time. We filed a demurrer to the complaint with its already multitudinous amendments, as it existed prior to January 29, 1957. We demurred to the complaint

as it then existed, and were willing to stand on to that complaint. But on that day the plain and the trial court accepted over objection, which were the basis of the Supreme Court later holding that the demurrer should not have been sustained. On the same day that those amendments were offered and accepted, the trial court announced that it would treat the demurrer as addressed to the complaint as so amended and so treating it would sustain the demurrer. Later, on February 4, 1957, a formal order to that effect was entered. R. 221.

Obviously, no rational person files an answer to a complaint that has been dismissed. After the Supreme Court of Georgia reversed, the mandate was received by the trial court on July 18, 1957, and four days later was entered as judgment of the trial court. On the same day the answer was filed. R. 221. Thus at the very most the amendments were part of the complaint, and within a maximum of ten days when the answer was filed. Upon request of plaintiffs the trial court held the defendants in default for having filed their answers. To be sure, the request to strike the answer, and the order striking it, were later rescinded. Plaintiffs later moved to set aside the judgment of the trial court. Apparently they were unwilling to have this case remanded on appeal with an order entered at their request holding them in default for not having answered allegations that had been dismissed. But in the meantime the appellants were under the handicap of trying to resist procedural motions while in default.

Perhaps the worst miscarriage of justice in this case was the order of May 8, 1958. R. 65-6. The parties were ordered for a routine pretrial conference to report on the progress of the taking of depositions so that the matter could be discussed. Without notice, without a hearing, without motion, without specificity, without an affidavit

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for, and the court granted, an order fantastically beyon-
any reasonable specificity that could be sustained. It re-
quired the labor organization defendants to produce "all
books, records, papers, documents, books of original entries,
check books, ledgers, vouchers, correspondence, files, mem-
utes, diaries, memoranda, circulars, printed materials, broch-
ures" for a five year period "over which they or their
agents might have control or custody," together with all
officers and agents of said defendants competent and pre-
pared to testify under oath concerning the "identity, nature,
contents, accuracy, source, and purpose" of said materials.
R. 65-6. Such order was far beyond orders held unreason-
ably broad in decisions prior to this case. *Ringwald v.*
Watkins, 28 Ga. App. 298, 111 S. E. 83; *Branan v. N. C. & W.*
L. R. Co., 119 Ga. 738, 46 S. E. 882; *Virginia-Carolina Chem.*
Co. v. Hollis, 23 Ga. App. 634, 99 S. E. 154. Indeed, the
absence of a written motion, and the absence of an affidavit
or statement of counsel in his place, alone would render
that order invalid and contrary to law. *Virginia-Carolina*
Chem. Co. v. Hollis, 23 Ga. App. 634, 99 S. E. 154. But the
court refused to grant these appellants an opportunity
prepare to resist that motion made without notice, although
they requested it. R. 221-2. Thereafter, the court denied
two oral and one written requests for an opportunity
reargue that motion. R. 222-3.

It is apparent, although the trial court refused to include
it in the Bill of Exceptions, that the extremely burdensome
nature of that order, requiring the defendants to produce
truckloads of their records, disrupt their operations, and
furnish expert witnesses, drove them into the one-sided

*See Georgia Code, Title 38, Sec. 801, 802, 806; specifically
requiring that before an order to produce may be issued there
must be a motion with specificity on the documents, that the motion
be written, accompanied by an affidavit or "statement of counsel
in his place," and heard after reasonable notice.

stipulation. As stated above, the trial court refused to include in the Bill of Exceptions, although it was on the record in the trial court, that officials of both parties to this case were produced by these stipulations, that although two to four lawyers representing the defendants or those witnesses were present at the depositions, no objections were made to the testimony asked by plaintiffs and no cross-examination was conducted by any of them. R. 114, 121, 125, 131, 152. The Court could take judicial notice that such stipulations would not arise and persist through the taking of depositions unless it was agreed in advance, as parties agreed, in obtaining a stipulation instead of complying with the order of May 8, 1958, that we would not object to the reading and would not conduct any cross-examination. The reading of those depositions will make it clear that this is not and it is the fact, that the questions are prepared and written out in advance, with the understanding that the departure from such prepared questions will terminate the negotiations.

Another result of that order was the stipulation that these defendants would not cross-examine the evidence offered by plaintiffs, and would offer no evidence of their own in their defense except additional evidence. They would offer such documents of which the plaintiffs made no request after being advised in advance by these stipulations of such additional parts they would offer if they had any on some other part. R. 163-4. In addition, the defendants undertook to answer requests for admission of the activities of organizations not parties to this case, of which organizations were no longer in existence. R. 487-92, R. 277-323. A more unbalanced stipulation is difficult to imagine.

Plaintiffs, of course, knew what evidence they would offer, but these defendants could not know what they would offer four days of introducing exhibits, reading

court also refused
ough it was in the
organizations not
se defendants, and
representing these
sent at each of the
to any questions
tion was conducted
62. We believe this
h a situation could
of six depositions,
art of the price of
ying with the order
ect to any questions
mination. Indeed, a
it abundantly clear,
and answers were
understanding that any
s and answers would

he agreement in the
uld object to no evi-
offer no evidence of
dditional portions of
fs might offer a part
se defendants of what
er if plaintiffs offered
the union defendants
admissions concerning
s to this litigation, two
e-in existence. Exhibits
nced trial of a case is

evidence they would
not know. Yet, after
reading depositions, and

reading extracts from, or all of, such documents
tiffs chose to introduce in evidence, after being
with a huge mass of material by these defendants
below refused to defer final argument on the m
a transcript was available so that these defend
ascertain clearly just what was in the record.
asked for such an opportunity, both before a
closing argument, but it was denied them. R. 22

Perhaps not the most damaging, but probably
glaring denial of due process in defending this
place at the close of oral argument on the merit
time the court orally announced its ruling
counsel for the plaintiffs to prepare an order a
on counsel for the union defendants and coun
railroad defendants and to furnish a copy to
R. 227. One of counsel for the plaintiffs then
that he and his associates had been preparin
order for 10 days and then and there served c
counsel for the defendants and furnished the co
R. 227. We were directed to state our objectio
order *instantly*, and it was only after much plea
luncheon recess was called during which time, an
things, we could try to prepare our argument on
R. 227-8.

It is elementary that due process of law and
protection of the laws require that defendants
fair opportunity to defend, at least something a
a proportionate opportunity to resist what plai
prepared. See *Frank v. State*, 142 Ga. 741, 83
Norman v. State, 171 Ga. 527, 529, 156 S. E. 20
Macon v. Benson, 175 Ga. 502, 508, 166 S. E. 20
Walker, 206 Ga. 181, 56 S. E. 2d 511; see also *B*
Faris Co. v. Hill, 281 U.S. 673, 680, 682. Any
foregoing rulings of the trial court would o
enough to warrant a holding that these defend
have such opportunity. Certainly the combinati
can leave little doubt.

MOTION OF RAILWAY
LABOR EXECUTIVES'
ASSOCIATION FOR LEAVE
TO FILE A BRIEF ON THE
MERITS AS AMICUS CURIA
AND ANNEXED BRIEF

IN THE
Supreme Court of the United States

OCTOBER TERM, 1959

INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL.,
Appellants,

v.

S. B. STREET, ET AL.,
Appellees.

On Appeal from the Supreme Court of Georgia

**MOTION OF RAILWAY LABOR EXECUTIVES'
ASSOCIATION FOR LEAVE TO FILE A BRIEF
ON THE MERITS AS AMICUS CURIAE, AND
ANNEXED BRIEF**

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1959

No. 258

INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL.,
Appellants,

v.

S. B. STREET, ET AL.,

Appellees.

On Appeal from the Supreme Court of Georgia

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**MOTION OF RAILWAY LABOR EXECUTIVES'
ASSOCIATION FOR LEAVE TO FILE A BRIEF
ON THE MERITS AS AMICUS CURIAE.**

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The Railway Labor Executives' Association respectfully moves the Court for leave to file the annexed brief *amicus curiae* on the merits of the appeal in this case by the International Association of Machinists, *et al.* The consent of the attorney for the appellants and for the railroad appellees¹ has been obtained. The consent of the attorneys for the individual appellees was requested but refused.

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¹ The consent of the Railroad Appellees is expressed in terms of "No objection" to the filing of a brief *amicus curiae* by the Association.

The Railway Labor Executives' Association is a voluntary unincorporated association located in Washington, D. C., with which are affiliated standard national and international organizations that are the duly authorized representatives of more than 90 per cent of the employees under the Railway Labor Act, 151 *et seq.*) The names of these individual organizations are:

American Railway Supervisors' Association
 American Train Dispatchers' Association
 Brotherhood of Locomotive Engineers
 Brotherhood of Locomotive Firemen
 men
 Brotherhood of Maintenance of Way Employees
 Brotherhood of Railroad Signalmen
 Brotherhood of Railroad Trainmen
 Brotherhood Railway Carmen of America
 Brotherhood of Railway and Steamship
 Freight Handlers, Express and Messenger
 Employees
 Brotherhood of Sleeping Car Porters
 Hotel and Restaurant Employees and
 International Union
 International Association of Machinists
 International Brotherhood of Boiler
 Ship Builders, Blacksmiths, Forgers
 Helpers
 International Brotherhood of Electrical Workers
 International Brotherhood of Firemen
 International Organization Masters, Mates
 Pilots of America
 National Marine Engineers' Beneficial
 Association
 Order of Railway Conductors and Engineers
 Railroad Yardmasters of America
 Railway Employees' Department, A. F. of M.

Sheet Metal Workers' International
Association
Switchmen's Union of North America
The Order of Railroad Telegraphers

Association is a
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, AFL-CIO

This Court has heretofore recognized the As- as a proper party to appear and speak for organizations and their member employees. *Commerce Commission v. Railway Labor Ex Association*, 315 U.S. 373 (1942); *Railwa Executives' Association v. United States*, 142 (1950); *American Trucking Associatio et al. v. United States*, 355 U.S. 141 (1957). the foregoing organizations, but not all, are appellants in this case."

II

The questions presented by the appeal in are of vital importance to the Railway Labor tives' Association and the individual organiz which it is composed. Included in the thou collective bargaining agreements which thes zations maintain with rail carriers governing of pay, rules, and working conditions of t ployees are more than 1000 union shop ag the validity of which is challenged by the below. The nine organizations listed above, v affiliated with the Association, and which are

¹ The nine organizations which are not parties to t clude the American Railway Supervisors' Associatio hood of Locomotive Engineers, Brotherhood of Locon men and Enginemen, Brotherhood of Railroad Trainm hood of Sleeping Car Porters, Hotel and Restaurant, and Bartenders International Union, Order of Ra ductors and Brakemen, Railway Employes' Departm CIO, and Switchmen's Union of North America.

ties-appellants in this case, alone have union shop agreements covering many employees on railroads all over the country of which are challenged by the decision which will be affected by the decision. The interest of the Association in the union shop agreements is shown by the fact that it filed a brief *amicus curiae* in *Railway Labor Board v. Hanson*, 351 U.S. 22, 352 U.S. 572, 16 AFTR2d 351 (1956). The close relationship of the Association to the industry is further demonstrated by the fact that it took the depositions of officers of the Association in the proceedings below concerning the Association and its relationship to the appellants (R. 108-115) and paragraphs 25 of the Stipulation of Facts (R. 179-181). The Association, its organization, its officers, and the financing of those activities, clearly appear to entitle the Association to participate in this case for itself and the organizations affiliated with it.

III

This interest of all railway labor organizations in the decision below, including the substantial interest of organizations with more than 250 union members, which are not parties-appellants, is not fully represented by appellants alone. The appellants must direct their arguments toward the issues raised by the notice of appeal, not all of them to the industry as a whole. The Association must concentrate its presentation to the broad issues raised by all of its affiliated organizations. More appellants are not in the same position as the Association to speak for the whole of railro-

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Moreover, the ap-
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ilroad labor with

respect to the important problems before t
on this appeal.

Finally, the reliance in part by the appel
the facts concerning the Association, its offi
its activities as set forth in paragraphs 25 th
of the Stipulation of Facts (R. 179-181) giv
an interest of the Association in the litigati
can be most adequately and directly repres
the Association itself.

WHEREFORE, the Association moves the C
leave to file the brief annexed hereto on the
the questions raised by the appeal.

Respectfully submitted,

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February, 1960

IN THE
Supreme Court of the United States

OCTOBER TERM, 1959

No. 258

INTERNATIONAL ASSOCIATION OF MACHINISTS

v.

S. B. STREET, ET AL.,

On Appeal from the Supreme Court of Georgia

BRIEF OF RAILWAY LABOR EXECUTIVES' ASSOCIATION AS AMICUS CURIAE

The Railway Labor Executives' Association files this brief as *amicus curiae* in support of its position that the Supreme Court of Georgia should reverse the final judgment of the International Association of Machinists that this Court reverse a final judgment of the Supreme Court of Georgia (R. 270), affirming the judgment and decree of the Superior Court of Biloxi County, Georgia, (R. 105) enjoining the enforcement of the

shop agreements between the appellant railway labor organizations and nine named railroads.

THE INTEREST OF THE ASSOCIATION.

The interest of the Association in this case is set forth in the annexed motion of the Association for leave to file this brief and need not be repeated here.

QUESTIONS PRESENTED

The notice of appeal (R. 273) in this case raises eleven questions. The Association in this brief will concern itself only with two of those questions as three issues falling within the ambit of those questions which are of primary concern to the Association. These are:

1. Is there any governmental action involved in this case on which constitutional issues may properly be based?

2. Did the Supreme Court of Georgia err in holding that the decision of this Court in *Railway Employees' Dept., A.F.L. v. Hanson*, 351 U.S. 225, is inapplicable where it is found that a union having a union shop agreement spends part of its funds for political and legislative purposes?

3. Did the Supreme Court of Georgia err in holding that union shop agreements entered into pursuant to the Railway Labor Act violate constitutional rights of individual appellees on the ground that a part of the periodic dues, initiation fees, and assessments paid by such individuals to appellant organizations are lawfully used to support political and legislative programs in the best interests of such organizations?

SUMMARY OF ARGUMENT

1. There is no governmental action giving rise to Federal constitutional issues in this case. This Court in the *Hanson* case held that there was governmental action upon which to base Federal constitutional issues in a situation where union shop agreements were made valid contrary to provisions of state law by Section 2, Eleventh of the Railway Labor Act. The Court found that in such a situation the Federal statute was the source of the power and authority by which any private rights were lost or sacrificed. There are no comparable provisions of state law here involved invalidating railroad union shop agreements. Although the petition in this case alleged that the union shop agreements violated certain provisions of Georgia law, and the Georgia courts found that the union shop agreements here involved were contrary to the law and public policy of the state, there does not appear to be any foundation for such a conclusion. The findings of the Georgia courts were expressed in general terms without reference to any specific provision of Georgia law. Moreover, an examination of Georgia law reveals that the provisions of Georgia "right to work" statutes specifically exempt the railroad industry. Therefore, it does not appear, as it did in the *Hanson* case, that the Railway Labor Act can be said to be the source of the power and authority by which it can be asserted that private rights are lost or sacrificed. Nor can it be argued that there is governmental action involved because the Railway Labor Act prevents the State of Georgia from enacting laws which would outlaw union shop agreements in the railroad field. The existing exemptions contained in the Georgia statutes relating to the railroad industry

were adopted in 1947, almost four years prior to the adoption of the union shop amendment of the Railway Labor Act, and must be taken as the settled law of Georgia.

2. Assuming *arguendo* that there is governmental action involved in this case so as to give rise to constitution issues, it is submitted that those issues were resolved by this Court in the *Hanson* decision. The Georgia trial court originally interpreted the *Hanson* decision as disposing of the claims of the individual plaintiffs-appellees and dismissed the petition. That judgment was reversed by the Georgia Supreme Court which held that the *Hanson* decision is inapplicable to a situation where it was found that a union having a union shop agreement expends a part of its funds for political and legislative purposes. However, it is submitted that a re-examination of the *Hanson* case shows that the only situation left open for re-examination is one where conditions of membership other than the payment of initiation fees, periodic dues, and assessments are imposed or the exaction of such initiation fees, dues, or assessments is used as a cover for forcing ideological conformity. Such a situation is clearly not involved here, as in this case, the union shop agreements specifically provide that the membership of employees subject thereto shall not be denied or terminated for any reason other than the failure of employees to tender the initiation fees, periodic dues, and assessments uniformly required as a condition of acquiring or maintaining membership in the union and where nothing more is involved than the expenditure of union funds for political and legislative purposes. The mere expenditure of funds for a purpose with which the i

dividual member may not agree does not impose any condition of membership upon him other than the payment of initiation fees, periodic dues, or assessments, nor does it in any way force ideological conformity by requiring him to agree with such purposes. The individual member is left free to oppose the legislative and political programs favored by the union if he so desires and neither his union membership nor his employment is affected. The North Carolina Supreme Court has considered the same problems that are raised in this case and found that they were disposed of by the *Hanson* decision.

3. Assuming *arguendo* that the issues before the Georgia court in this case were left open by the *Hanson* decision, it is further submitted that there is in fact no violation of Federal constitutional rights involved. The decision of the Georgia court is based upon the erroneous assumption that the use of union funds to support political or legislative programs with which a member may not agree is the equivalent of requiring the member to conform to the views of the union on such programs. These contentions have been considered and rejected by the Supreme Courts of California and North Carolina. The courts of New York and Indiana have also held that union shop agreements do not give rise to any violations of personal liberty or of the Fourteenth Amendment. The Georgia court stands alone in its conclusions, which are an integral part of its views, expressed in the decisions below, that this Court erred in the *Hanson* decision.

ARGUMENT

I

NO GOVERNMENTAL ACTION GIVING RISE TO CONSTITUTIONAL PROBLEMS IS HERE INVOLVED

The Supreme Court of Georgia stated the constitutional issue it was deciding as follows (R. 266-269)

"The fundamental constitutional question is: Does the contract between the employer and the plaintiffs and the union defendants, which compels these plaintiffs, if they continue to work for the employers, to join the unions of their respective crafts, and pay dues, fees, and assessments to the unions, where a part of the dues will be used to support political and economic programs and candidates for public office, violate the plaintiffs not only do not approve but also violate their rights of freedom of speech and to deprive them of their property without due process of law under the First and Fifth Amendments of the Federal Constitution?"

The court answered this question in the affirmative (R. 266-269)

It is clear that a question of infringement of individual Federal constitutional rights does not arise from the execution and enforcement of a contract between private parties because it is fundamentally outside the prohibitions of the United States Constitution which apply only to governmental action. *Corrigan v. U.S. Army*, 271 U.S. 323 (1926); *Civil Rights Cases*, 109 U.S. 3, 11; *Slaughterhouse Cases*, 16 Wall. 36; *Stutes v. Cruikshank*, 92 U.S. 542; *United States v. Harris*, 106 U.S. 629, 639; *Hodges v. United States*, 203 U.S. 1, 18. The Georgia court therefore held when it held that the union shop agreements

appellants and appellee railroads violated Federal constitutional rights of the individual appellees.

Nor is this conclusion affected by the findings of this Court in *Railway Employees' Dept., A.F.L. v. Hanson*, 351 U.S. 225 (1956) on this subject. At page 232 of its opinion in the *Hanson* case this Court considered the question of whether any governmental action was involved in the execution and enforcement of union shop agreements in the railroad industry so as to give rise to constitutional questions. It held that such governmental action was involved in the case before it because the union shop agreements there involved would have been invalid under Nebraska law but for the provisions of Section 2, Eleventh of the Railway Labor Act. (45 U.S.C.A. 152, Eleventh) Thus the Court concluded the cited provision of the Railway Labor Act was the source of the power and authority by which any private rights might be lost or sacrificed.

The plaintiffs-appellees attempted to bring themselves within the scope of this finding by alleging that the union shop agreements involved violated Chapter 54, Sections 804, 902, *et seq.* of the Georgia Code Annotated (R. 9, 10), as well as Chapter 2, Section 10 of that code, which appears in the Constitution of Georgia (R. 11). It is also alleged that the agreements violate Article 1, para. 3 of the Georgia Constitution (R. 12).

The trial court found, *inter alia*, that said union shop agreements are contrary to "the law and public policy of this State." (R. 104) However, no specific provision of Georgia law was cited nor was any mention made of the provisions of Georgia law alleged in the

petition as a basis for constitutional issues. The Supreme Court of Georgia quoted paragraph 8 of the trial court's conclusions of law (R. 264, 265) and it did not cite any provision of state law prohibiting the agreements in question. Significantly, the court did not even rest the presence of constitutional issues on any such Georgia law, but simply stated on broad ground that the Railway Labor Act "prohibits or allows defendants to make contracts in violation of the constitutional rights of the plaintiffs." (R. 265, 266)

An examination of the provisions of Georgia law set forth in the petition clearly shows the reason for these omissions from the decisions below because it reveals that nothing in Georgia law prohibits the agreements here involved.

The petition alleged that the union shop agreements violated Chapter 2, Section 102 of the Code of Georgia which is Article 1, paragraph 2 of the Constitution of Georgia which reads as follows:

"Protection to person and property is the paramount duty of government, and shall be inviolable and complete."

This provision appears in the "Bill of Rights" of the Georgia Constitution and does not appear to have any applicability to the question of the validity of union shop agreements. Moreover, a reliance on such a provision, also embodied in an equivalent Federal "Bill of Rights," to prohibit railroad union shop agreements in Georgia and thus create a conflict between Georgia law and the Federal law so as to give rise to Federal constitutional issues involves a peculiar process of reasoning.

The same may be said for Article 1, paragraph 3 of the Georgia Constitution cited by the petition (R. 12) which reads as follows:

"No person shall be deprived of life, liberty, or property except by due process of law."

The inapplicability of these provisions is clearly indicated by the fact that the Georgia statutes specifically exempt railway labor union shop agreements from the scope of the state's "right to work" law found in Chapter 54, Sections 804, 902, *et seq.* of the Georgia Code and cited in the petition (R. 9).

Section 804 of Chapter 54 prohibits any person from compelling or attempting to compel another to join a "labor organization."

Section 902 makes it unlawful for individuals, as a condition of employment or continued employment, to be required to become or remain a member of a "labor organization." Likewise, Section 905 makes it unlawful for an "employer" to contract with any "labor organization" to make employment or continued employment conditional on membership in a "labor organization" on the payment of any fee, assessment, or money to such an organization.

If these provisions were applicable to railroads subject to the Railway Labor Act or to railway labor organizations also subject to that statute, then the findings of this Court in the *Hanson* case respecting the presence of governmental action would be applicable here.

However, Section 901(a) of Chapter 54 of the Georgia Code defines the term "employer", as used in Chapter 54, as follows:

"The term 'employer' includes any person in the interest of an employer, directly or indirectly, *but shall not include the United States, any State, or any political subdivision thereof, or any person subject to the Railway Labor Act as amended from time to time* * * * (as supplied).

Section 901(d) defines the term "labor organization," as used in Chapter 54, to mean any organization which exists to deal in whole or in part with employers" concerning grievances, labor disputes, rates of pay, hours of employment, or conditions of work.

Thus the railroad appellees, which as employers of the individual appellees entered into the union agreements here involved, were not prohibited by Chapter 54 of the Georgia Code from executing such contracts. Similarly, Section 902 of Chapter 54 does not operate against such agreements because the appellees clearly were not "labor organizations" as defined by Section 901(d), i.e., organizations dealing with "employers" covered by the statute.

It would, therefore, clearly appear that there is no conflict of the petition to create a conflict between the Georgia law and Section 2, Eleventh of the Railway Labor Act are entirely "make weight" and that the constitutional violations found by the Georgia court upon violations of claimed constitutional rights in private contracts not requiring the overriding provisions of Section 2, Eleventh of the Railway Labor Act to give them force and effect in Georgia.

The only effect of the Railway Labor Act in this situation is to withdraw the previously existing prohibitions of Federal law against such agreements.

it is submitted does not constitute "governmental action" within the intent of the *Hanson* decision.

Chapter 54 was enacted in 1947, nearly four years prior to the adoption of Section 2, Eleventh of the Railway Labor Act, and must be taken as the law of Georgia, as declared by its legislature; on this subject.

II

THE DECISION OF THE GEORGIA SUPREME COURT IS CONTRARY TO THE DECISION OF THIS COURT IN THE HANSON CASE

Assuming *arguendo*, that there is governmental action involved in this case so as to give rise to constitutional issues, it is submitted that those issues were resolved by this Court's decision in *Railway Employees Dept., A.F.L. v. Hanson*, 351 U.S. 225 (1956).

The trial court originally dismissed the petition in this case upon the precedent of the *Hanson* decision.

This judgment of dismissal was reversed by the Georgia Supreme Court on the ground that the petition raised issues left open by the *Hanson* decision. *Looper v. Georgia, Southern & Florida Railway Company, et al.*, 213 Ga. 279, 99 S.E.2d 101 (1957). The court's holding on this point read as follows (99 S.E.2d at 104):

"We go now to the single point raised which the Supreme Court has, we believe, clearly indicated is still open for decision. The petition of the non-union employees alleges that they have notified in accordance with the law and the contract of employment that unless they become members of a union within 60 days their employment will be terminated. It is alleged that the union dues and other payments they will be required to make to the union will be used to

port ideological and political doctrines which they are unwilling to support in which they do not believe, and which violate the First, Fifth and Ninth Amendments of the Constitution. While *Railway Laborers v. Hanson*, 351 U.S. 225, 38 LRRM 101, upheld the validity of a closed shop agreement executed under § 2, Eleventh, that opinion indicates that that court would not require that one join the union if the conditions thereto were used as this purpose. It is there said, 'Judgment is reserved as to the validity or enforcement of a union or closed shop agreement if other conditions of union membership be imposed such as the collection of dues, initiation fees or assessments, as a cover for enforcing ideological or other action in contravention of the Fifth Amendments.'

"We must render judgment now on the precise question. We do not believe one can constitutionally be compelled to contribute to support ideas, politics and candidates for office. We believe his right to freedom of expression is superior to any claim to such exactions is superior to any claim he can make upon him."

The court therefore held that the trial court was dismissing the amended petition.

However, it is submitted that the mere fact that funds derived from payments of membership dues for the purposes indicated, which are not illegal and are in accordance with the union's determination of its best interests of the organization and does not give rise to the situation as in *Hanson*. The Court reserved its judgment in the *Hanson* case although all members of the organization agreed with the expenditures.

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The mere expenditure of funds for a purpose which the individual member may disagree on does not impose any condition of membership other than the payment of initiation fees, periodic assessments. Nor does it in any way force ideological conformity. The individual member is not bound by the union shop agreements here involved. Support, as a condition of employment, any particular political ideas or candidates. Section 4 of the agreements specifically provides, in accordance with the provisions of Section 2, Eleventh of the Railway Labor Act, that the employment of an employee subject to the agreements shall not be terminated for any reason other than his failure to tender the initiation fees, periodic dues, and assessments uniformly required as a condition of acquiring or retaining membership. The provision of the agreements reads as follows (Section 208):

"Nothing in this agreement shall require any employee to become or to remain a member of the organization if such membership is not available to such employee upon the same terms and conditions as are generally applicable to any other employee, or if the membership of such employee is denied or terminated for any reason other than the failure of the employee to tender the initiation fees, dues, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership. For purposes of this agreement, dues, fees, and assessments, shall be deemed to be 'uniformly required' if they are required of all employees having the same status at the same time in the same organizational unit."

Thus the active or passive support of any particular idea or candidate by an employee subject to the

shop agreements will not and can not ployment. That being the case, the agreements are not "a cover for forcing ideological or other action in contravention of the agreement" the possibility of which concerned in the *Hanson* case.

➤ This view of the scope of the *Hanson* decision adopted by the North Carolina Supreme Court in *Allen, et al. v. Southern Railway Company*, 191 N.C. 491, 107 S.E.2d 125.³ In that case the union-shop agreements were subjected to a challenge of invalidity as is here advanced by the individual appellees. In holding that the agreements required rejection of such claims, the Supreme Court stated (107 S.E.2d at

"As we interpret *Hanson*, the Supreme Court of the United States has decided that the requirement that plaintiffs pay the ordinary dues and initiation fees uniformly required of all members does not violate either the First or the Fifth Amendment. Since the constitutionality of the Union Shop Amendment has been upheld, we need not discuss plaintiff's attack there predicated on the Ninth Amendment.

"All that defendant Unions demand of plaintiffs is that they pay the ordinary dues and initiation fees uniformly required of all members. *In all other respects, plaintiffs are free to speak and to act according to their own beliefs, even if by so doing they speak and act in opposition to the purposes with defendant Unions.*

"As we interpret it, the question presented in *Hanson* would arise only if and when

³ This decision is presently under reconsideration by the North Carolina court.

not affect his employment agreements clearly in violation of the First Amendment. Concerned this Court

Hanson decision was Supreme Court in *Company, et al.*, 249. In that case these same issues were addressed to the same challenge by the *Hanson* decision of the North Carolina Court (at 134):

The Supreme Court held that a requirement of primary periodic dues required of all members of the First or the Fifth Amendment of the Constitution of the United States has been expressly upheld by the Supreme Court in *Hanson* and *Allen*. The Fifth Amendment.

The demand of primary periodic dues required of all members of the First or the Fifth Amendment of the Constitution of the United States has been expressly upheld by the Supreme Court in *Hanson* and *Allen*. The Fifth Amendment.

Questions reserved in *Hanson* and when defendant's motion for summary judgment was denied by the North

Unions should undertake to deny membership on account of failure of plaintiffs to comply with the various regulations applicable to voluntary members, refusal to sign application blanks, failure to attend meetings, failure to speak or act in harmony with the policies and objectives of defendant unions, failure to pay an exaction imposed by wages or for disciplinary purposes, etc. In *Hanson* and *Allen*, notwithstanding the tender of dues by plaintiffs of ordinary periodic dues and initiation fees, the unions refused to recognize plaintiffs as members and to grant them any privilege to which a member is entitled. It would seem that by such conduct the unions would relieve plaintiffs from further obligations under the union shop agreement. It is conceivable that occasions will arise where defendant unions will prefer to forego the collection of periodic dues and initiation fees rather than to accept nonconformists as members of their unions." (Emphasis supplied)

The North Carolina court also observed that the union did not contend that the union expenditures violated the Federal Corrupt Practices Act (U.S.C.A. 610) or that such expenditures did not conform with the wishes of the majority of the union. Similarly no such claims are advanced in this case.

It is submitted that the analysis and interpretation of the *Hanson* decision made by the North Carolina Supreme Court in the *Allen* case is clearly correct.

III

THE USE² OF UNION FUNDS TO SUPPORT POLITICAL AND ECONOMIC PROGRAMS OR CANDIDATES OPPOSED BY INDIVIDUAL APPELLEES DOES NOT VIOLATE ANY FEDERAL CONSTITUTIONAL RIGHT OF SUCH PERSONS

Assuming *arguendo* that the issues before the Georgia courts in this case were left open by the *Hanson* decision, it is further submitted that there is in fact no violation of Federal constitutional rights involved.

The crux of the decision of the Georgia Supreme Court is that the union shop agreements here involved violate the rights of freedom of speech of the individual appellees under the First Amendment to the United States Constitution and deprives them of their property without due process of law under the Fifth Amendment because a part of the money paid by such individuals to the appellant organizations pursuant to such agreements is used to support political and economic programs and candidates which the plaintiffs-appellees not only do not approve but oppose (R. 266-270).

The court's conclusion that First Amendment rights of the individual appellees are violated is based on the following grounds (R. 269):

"One who is compelled to contribute the fruits of his labor to support or promote political or economic programs or support candidates for public office is just as much deprived of his freedom of speech as if he were compelled to give his vocal support to doctrines he opposes. Abraham Lincoln asserted a similar view when he said: 'I believe each individual is naturally entitled to the fruits of his labor, so far as it in no wise interferes with any other man's right.' There is a

common saying, that 'Money talks—sometimes louder than the spoken word.' In the case at bar, the personal convictions of the plaintiffs on political and economic issues are being combatted by the use of their financial contributions to foster programs and ideologies which they oppose."

The court's conclusion that Fifth Amendment rights of the individual appellees are violated is based on the following grounds (R. 269):

"If the requirement by the employer of his employee, as a condition of his employment, that he agree not to join a union, subjecting himself to be discharged if he did (now forbidden by the Railway Labor Act, 45 U.S.C.A. § 152, and the National Labor Relations Act, 29 U.S.C.A. § 157), is obnoxious to the employee's economic freedom to contract, then the requirement by the employer, based upon an act of the Federal Congress, that one in his employ as a condition of continued employment, would be compelled to join a union and pay dues, fees, and assessments which will be used in part for the support of ideologies he opposes, is likewise violative of his freedom to contract under the Fifth Amendment."

The fallacy underlying the court's conclusions with respect to the First Amendment is its assumption that use of union funds which are in part derived from payments made by the individual appellees to appellant organizations somehow deprives such individuals of their own views and the freedom to express such views.

It has long been recognized by this Court that the expenditure of moneys from the Federal treasury does not involve any injury to individual taxpayers which would furnish a basis for an appeal to the pre-

ventive powers of a court of equity. *Alabama Power Company v. Ickes*, 302 U.S. 464 (1938). Also *Massachusetts v. Mullen*, 262 U.S. 447 (1923). Similarly it is clear that the expenditure of union funds, small part of which may have been contributed by individuals who disagree with the purposes of the expenditures, does not inflict any injury upon such individuals nor can it even be said, as the California Supreme Court has pointed out (see *infra*, p. 27) that such expenditures involve the use of any one individual's money.

The Georgia court's conclusion is obviously at war with the facts of the situation and is an integral part of that court's views, candidly expressed in *Looper v. Georgia Southern & Florida Railway Company*, 21 Ga. 279, 99 S.E.2d 101 (1957), to the effect that this Court's decision in the *Hanson* case itself violates the principles of freedom of speech by denying the "right to work." In speaking of the *Hanson* decision in the *Looper* decision, the Georgia court stated (99 S.E.2d at 104):

"It strikes us as being a futile gesture to solemnly declare the sacred and indestructible constitutional right of one to freedom of speech and freedom of worship, and then sanction a denial of that same one's right to work which is the indispensable economic support without which neither freedom could endure. One could not for long enjoy speaking and worshipping freely if he was hungry and was denied bread or the means of obtaining it.

* * * *

"We believe that a single person armed with right—the right to work, should in all courts of justice be able to defeat the selfish demands of multitudes though they be members of a labor

union who seek to deprive him of that right. We would so rule in any case where we are allowed jurisdiction."

The contentions relied upon by the Georgia court were subjected to a searching analysis by the California Supreme Court in *DeMille v. American Federation of Radio Artists*, (Cal. Sup. Ct.) 187 P.2d 769 (1947) and were rejected by that court as based on erroneous assumptions. In that case the plaintiff, a well-known producer, was a member of the American Federation of Radio Artists and his employment by the Columbia broadcasting network as a producer of radio programs was subject to a union shop agreement. The union assessed each of its members \$1.00 for the purpose of setting up a fund to be used by the California State Federation of Labor to help bring about the defeat of a proposed "right to work" amendment to the California Constitution, outlawing union shop agreements, known as Proposition No. 12. Plaintiff refused to pay the assessment and was suspended from membership in the union. He then sought injunctive relief against the union. In support of this prayer for relief he contended, *inter alia*, that the levy of the assessment and his suspension for refusal to pay it infringed his constitutional right of suffrage, freedom of speech, press and assembly. The California Supreme Court described the plaintiff's contentions as follows (187 P.2d at 775):

"The plaintiff next contends that the levy of the assessment and the consequent suspension upon his refusal to meet it, infringed his constitutional right of suffrage, freedom of speech, press and assembly. He does not contend that he was prevented from voting as he pleased at the polls, or from exercising his free choice on the ballot;

nor that he was prevented from expressing publicly and privately his personal views in favor of Proposition No. 12; nor does he contend that the union engaged in any political activity or coercion upon him personally to vote in a particular way or to express himself individually in opposition to Proposition No. 12. Admittedly, the defendants did not prescribe what should be the members' individual beliefs nor declare that any expressions of individual members favorable to Proposition No. 12 would constitute grounds for charges of disloyalty. The plaintiff admits that nevertheless the compulsion by assessing \$1.00 on each member to provide a fund to be used by the union to oppose Proposition No. 12 was a violation of each and all of his stated individual rights.

"The ground of the plaintiff's assertion that his payment of the assessment would be a violation of his personal expression on his part contrary to his personal beliefs. He says: 'To compel appellant to hand in his pocket and to give money to the union leaders to be used to oppose Proposition No. 12 to be voted on at the election of November 1912 when he was unwilling to oppose it and when appellant's sentiments were in favor of Proposition No. 12, compelled appellant to give expression to his sentiments and to act contrary to his sentiments and to his thoughts, and * * * to his opinion.' The giving of the money in opposition to appellant's sentiments was more eloquent than any words of actual words.' "

The California court rejected in the following language the plaintiff DeMille's assumptions, which are also inherent in the Georgia court's conclusion involved, that compulsory contribution to the fund to be used to defeat Proposition No. 12 amounted to a compulsory endorsement by him of such op-

and a use of his money for such purpose (187 P.2d at 776):

"The member and the association are distinct. The union represents the common or group interests of its members, as distinguished from their personal or private interest. 'Structurally and functionally, a labor union is an institution which involves more than the private or personal interests of its members. It represents organized institutional activity as contrasted with wholly individual activity.' This difference is as well defined as that existing between individual members of the union." (United States v. White, 32 U.S. 694, at page 701. Dues and assessments paid by members to an association become the property of the association and any severable or individual interest therein ceases upon such payment. (Lawson v. Hewell, supra, 118 Cal. 613, 622; Rhode v. United States, 34 App. Cases, Dist. of Col. p. 249; Lamm v. Stoen, 226 Ia. 622, 284 N.W. 465; Carpenters Union v. Backman, 160 Ore. 520, 86 P.2d 456; Textile Workers Union v. Barrett, 19 R.I. 663; South Shore Country Club v. The People, 22 Ill. 75, 81 N.E. 805; Franklin v. Burnham, 40 Misc. Rep. 566, 82 N.Y. Supp. 882.) As such property they are subject to disbursement and expenditure by the association in pursuit of the lawful object or objects for which they were designated to be expended.

"It has been seen that union opposition to the adoption of Proposition No. 12 was an object within the sphere of the organic law of the Federation and its Local. Indeed, the plaintiff does not contend that the union may not thus speak. What he contends is that the union may not use his money for that purpose.

"The Local's declaration to pursue the objective and to authorize the raising of a fund for the purpose was expressed by the membership

through democratic procedures. It is too safe to assume that the Local's action was in accordance with the opinion of the majority members of the Local. *In no wise may it be said that it necessarily represented the opinion of every individual member thereof, and consequently that of the plaintiff.*" (Emphasis supplied)

The court went on to point out that mere disagreement with the majority did not excuse plaintiff from paying the assessment. Its statement on this point may be read (187 P.2d at 776):

"Mere disagreement with the majority does not absolve the dissenting minority from compliance with action of the association taken through authorized union methods. And compliance with payment by the plaintiff of the assessment does not stamp his act as a personal endorsement of the declared view of the majority. Majoritarianism necessarily prevails in all constitutional governmental arrangements including our federal, state, county and municipal bodies, else payment of a tax levied by a duly authorized and proper objective authority would be avoided by the mere assertion of beliefs and opinions opposed to the accomplishment of the public benefit. In a government based on democratic principles, the benefit as perceived by the majority prevails. And the individual citizen would raise but a cry of invasion of his constitutional rights if he seek to avoid his obligation because of a difference in personal views. A member of a voluntary association should not be permitted successfully to seek a similar avoidance."

The court then concluded, after analyzing the facts relied upon by plaintiff, that plaintiff's assumption that the assessment amounted to compulsion upon him to adopt the union view was without merit. T

cluding finding of the court read as follows (187 P.2d at 778):

"In his reliance on the foregoing and other similarly distinguishable cases, the plaintiff has assumed that the union's action in levying an assessment for the purpose stated was some sort of compulsion upon him to adopt the union view of what was best for union interests, and that payment thereof would be an expression on his part of the union belief. As has been seen the assumption is not warranted by the facts."

The court also noted that the principles enunciated by it did not involve any novel development, but simply an application to labor unions of views that had always prevailed with respect to medical associations and bar associations. On this point the California court stated (187 P.2d at 776-777):

"The plaintiff states that this is a case of first impression. But the principles involved and applicable to the facts are not new. Here novelty is present only in the assertion that the proper use of association funds may be avoided by a member who is committed to a minority view. Other organizations, such as Medical Associations, Bar Associations, and the like, have used their funds to support favorable legislation or defeat measures considered in the opinion of the majority or its duly authorized representatives to be inimical to the public interest or to its own welfare. It has never been considered that a difference of opinion within the association as to the use of association funds for such purposes, where otherwise lawful, was a matter for judicial interference."

The analogy drawn by the court to bar associations is the same as that drawn by this Court in the *Hanson* opinion (page 238) where it is stated:

"Wide-ranged problems are tendered First Amendment. It is argued that shop agreement forces men into ideological political associations which violate their freedom of conscience, freedom of association, freedom of thought protected by the First Rights. It is said that once a man becomes a member of these unions he is subject to disciplinary control and that by force of the National Labor Relations Act unions now can make him conform to a particular ideology.

"On the present record, there is no infringement or impairment of First Amendment rights than there would be in the case of a man who by state law is required to be a member of an integrated bar."

The decision of the Georgia Supreme Court concerning the application of the First Amendment to union shop agreements is also contrary to the holding in *Wicks v. Southern Pacific Company*, 121 F.2d 454, *aff'd*, 231 F.2d 130 (9th Cir., 1956), *cert. denied*, 354 U.S. 946.⁴

The Georgia court's rationale as to why the First Amendment rights of individual appellees are violated is equally erroneous on its face. The court's substance that since the Railway Labor Act and the National Labor Relations Act prohibit so-called "low dog" contracts, it follows that the authorization of union shop agreements in the circumstances involved amounts to a violation of the First Amendment contract given to individual appellees by the First Amendment. The conclusion is a complete

⁴ The petition for certiorari in this case was denied 354 U.S. 946, 1956, a week after issuance of the *Hanson* decision.

sequitur from the premise. Moreover, the argument is simply a restatement of the "right to work" theory to which the Georgia court clearly stated it was dedicated in the *Looper* decision. *Supra*, pages 17-18. This argument was forcefully rejected by the Appellate Court of Indiana sitting *en banc* in *Smith v. General Motors Corp.*, 143 N.E.2d 441 (1957) with the following finding (143 N.E.2d at 449):

"Appellant's constitutional argument proceeds upon the assumption that a worker may force his employment upon a particular employer, which is the situation where an employer has made a voluntary contract determining whom he will or will not employ. To force an employer to take any particular worker on the ground that he has a right to work at the particular job certainly smacks of totalitarianism."

Contentions that union shop agreements violated the Fifth Amendment were also rejected in *Wicks v. Southern Pacific Company*, 121 F. Supp. 454, *aff'd* 231 F.2d 130 (9th Cir. 1956), *cert. den.* 351 U.S. 946, and similar contentions respecting the Fourteenth Amendment were rejected by the New York Court of Appeals in *Williams v. Quill*, 277 N.Y. 1, 32 N.E. 2d 347 (1938).⁵

In addition, the War Labor Board during World War II rejected contentions that union shop agreements were contrary to basic public policy because they permit use of governmental authority to make possible political contributions. *In re Carnegie-Illinois Steel Corp. et al. and United Steelworkers of*

⁵ An appeal to this Court was dismissed for want of a final judgment, *Williams v. Quill*, 303 U. S. 621 (1938).

America, 15 LRRM 1596 (1944).⁶ On Board stated (15 LRRM at 1598):

"Unions in basic steel industry a continuation of maintenance-of-meetings union-shop provisions contained in contracts between parties, despite contentions of others, that unauthorized work stoppages taken place and that political activity by parent body makes such provision against public policy because it permits union mental authority to make possible contributions, since general record of union one of responsibility and cooperation into internal affairs of union, as company, is not warranted by Board.

There is a suggestion in the opinion of the Supreme Court that the union shop agreements involved are invalid in this case because of the plaintiffs are not seeking employment as railroad contractors but are already employed (269). The decree of the trial court for enforcement of the agreements (R. 105) does not contain any such distinction. Moreover, such distinction is wholly without merit. In *McMullen v. Oklahoma and Gulf Railway Co.*, 229 F.2d 1011 (9th Cir., 1956), *cert. den.* 351 U.S. 918, an attack upon an agreement negotiated by a railroad containing a provision for compulsory membership of railroad engineers at the age of 70. The plaintiffs were engineers who were already of age of 70. It was contended by them that under the circumstances the agreement was invalid because no notice had been given to them and it deprived them of property rights in violation of the Fifth

⁶ Reference is to Labor Relations Reference Manual.

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are entitled to membership and in previous contentions, among stoppages have activity engaged in union contrary to use of government political union has been union and inquiry as suggested by board policy."

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to the Federal Constitution. The Tenth Circuit rejected this argument with the following finding (2 F.2d at 56):

"These contentions are without merit. It is conceded that the B.L.F.&E. was the duly selected and certified bargaining agent for the craft including these plaintiffs, with authority to contract with the railroad on matters relating to rates of pay, rules and working conditions. The Railway Labor Act requires railroads to 'treat with' certified representatives of the employees and with no others. 45 U.S.C.A. § 152, Ninth; *Virginian Co. v. System Fed.* No. 40, 300 U.S. 515, 545, 557 S.Ct. 592; 81 L.Ed. 789; *Lewellyn v. Fleming* supra. In the *Lewellyn* case [154 F.2d 213], it was stated that the Act 'undoubtedly included the authority to prospectively contract with reference to seniority rights of the members of the craft, whether members of the union or not'. The compulsory retirement provisions of the contract with which we are dealing are prospective, and are not retroactive in any respect. They do not affect rights already accrued. They seek to change existing terms of the contract and to apply the changes in the future. This, the bargaining agent has the power to do. *Elgin, J. & E. Ry. Co. v. Burley*, 325 U.S. 711, 739, 65 S.Ct. 1282, 89 L.Ed. 1886. The contractual provisions were for the collective interests of all the employees represented, even though some were adversely affected. Since the Railway Labor Act does not create permanent status for employees or fix unlimited tenure in their jobs, there was no violation of the plaintiffs' Constitutional rights."

To the same effect is the decision of the Supreme Court of Missouri in *Cook v. Brotherhood of Sleeping Car Porters*, 309 S.W.2d 579, 587 (1958) involving union shop agreements.

The Georgia court stands alone
it has reached.

CONCLUSION

Upon the basis of the foregoing
ties, it is respectfully submitted that
the Georgia Supreme Court should

Respectfully submit

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February, 1960

MOTION FOR LEAVE TO
FILE A BRIEF AS AMICUS
CURIAE AND BRIEF FOR
THE AMERICAN FEDERATION
OF LABOR AND CONGRESS
OF INDUSTRIAL ORGANIZATION
AS AMICUS CURIAE

FILE COPY

MOTION FILED FEB 23 1960

NO. 200 4

IN THE
Supreme Court of the United States

OCTOBER TERM, 1959

INTERNATIONAL ASSOCIATION OF MACHINISTS,
ET AL., *Appellants,*

S. B. STREET, ET AL.

ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF GEORGIA

MOTION FOR LEAVE TO FILE A BRIEF
AS AMICUS CURIAE
AND
BRIEF FOR THE AMERICAN FEDERATION OF LABOR
AND CONGRESS OF INDUSTRIAL ORGANIZATIONS
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1959

NO. 258

INTERNATIONAL ASSOCIATION OF MACHINISTS
ET AL., *Appellants,*

v.

S. B. STREET, ET AL.

ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF GEORGIA

MOTION FOR LEAVE TO FILE A BRIEF
AS AMICUS CURIAE

The American Federation of Labor and Congress Industrial Organizations (AFL-CIO) hereby respectfully moves for leave to file a brief *amicus curiae* in this case in support of appellants, as provided in Rule 42 of the Rules of this Court. The consent of the attorneys for the appellants has been obtained. The consent of the attorneys for the appellees was requested but refused.

The AFL-CIO is primarily a federation of national and international labor unions, including all of the appellee unions. Total membership of the unions affiliated with the AFL-CIO is approximately thirteen million. Technically, the appellees here are challenging the validity of union contracts executed by appellants pursuant to section Eleven of the Railway Labor Act, as amended by the Act of January 10, 1951, 64 Stat. 1238, 45 U.S.C. §

Eleventh. Realistically, appellees are challenged by labor organizations, such as the AFL-CIO, to enter into union shop contracts without one of the most effective means available for the best interests of their membership: political action.

Appellants will discuss in detail the technical supporting the lawfulness of such union action. If the present motion is granted, the AFL-CIO will present before the Court an outline of historical and contemporary facts establishing that political activity has traditionally been an integral and vitally essential feature of the labor program for improving their lot through organization. Their own treatment of the legal issues will be confined to a summary, intended only to place the historical and economic data in their proper context. We feel that the material we present will assist the Court in understanding the leading role of union political action in American labor, and in assaying the soundness of the arguments that political action continues to be a necessary element of any truly effective program for economic betterment of the worker.

Respectfully submitted,

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February 1960

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IN THE
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NO. 258

INTERNATIONAL ASSOCIATION OF MACHINISTS
ET AL., *Appellants*,

v.

S. B. STREET, ET AL.

ON APPEAL FROM THE SUPREME COURT OF GEORGIA

BRIEF FOR THE AMERICAN FEDERATION OF
LABOR AND CONGRESS OF INDUSTRIAL
ORGANIZATIONS AS AMICUS CURIAE

INTEREST OF THE AFL-CIO

This brief *amicus curiae* is filed by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), contingent upon the Court's granting Motion for Leave to File a Brief as Amicus Curiae.

Appellants herein are relying upon the validity of Section 2, Eleventh of the Railway Labor Act, as amended by the Act of January 10, 1951, 64 Stat. 1238, 45 U.S.C. § 151, Eleventh, and upon the validity of union shop agreements executed pursuant thereto. Appellants are affiliated with the AFL-CIO. Numerous other labor organizations are affiliated with the AFL-CIO, as well as appellants, who are critically affected by an adverse decision in this case, and they are operating under thousands of similar union agreements executed pursuant to the proviso contain-

section 8(a)(3) of the National Labor Relations Act. An adverse decision might, in effect, compel the union either to give up the union shop, or to abandon political and essential activities in the political fields. The AFL-CIO, whose affiliated unions represent approximately thirteen million American workers, is the most direct and compelling kind of interest to come of the present litigation.

ARGUMENT

The court below held, inter alia, that the use of funds for the promotion of political propaganda by the appellees, where such funds are collected from union shop agreements permitted under section 8(a)(3) of the Railway Labor Act, violates appellees' rights under the First and Fifth Amendments to the Constitution of the United States (R. 249-250). This brief will show that these startling constitutional propositions are unfounded.

¹ Two other teasing questions merit a brief word.

(1) As we read the opinion of the court below, it is based on an interpretation of the Federal Constitution. Whether Georgia law was not discussed by the Georgia Supreme Court. Indeed, union shop or closed shop contracts have been held valid under the state's common law. See *Savoy v. Telegraph Co.*, 198 Ga. 728, 735-736, 32 S.E. 2d 801 (1940). And the state's "right-to-work" law, which expressly excludes the interstate railroad industry, Georgia Code § 54-901(a) (1958 Supp.). The question whether a federal constitutional question was presented in this case below. For it would appear that where there would be a right of action against the state under a statute or common law, but for the intervention of the National Labor Act, does the question of the constitutionality of a provision like section 2, Eleventh arise in the first instance? In *Ottens v. Baltimore & O. R. Co.*, 205 F. 2d 1001 (1956), see 65 Yale L. J. 724, 729-730 (1956). But in the present case, the constitutional issue, the court below appears to have

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Appellees' contentions have already been rejected
Court in *Railway Employees' Department v. Hanson*,
U.S. 225. The Court was there apprised that union
collected pursuant to union shop agreements were
used for political purposes. The validity of such union
agreements was nonetheless upheld.

We submit that constitutional rights are not at
since no governmental action is involved in a union's
tiation of a union shop contract or in its use of its funds
to promote workers' economic interests through appropriate
political and legislative activities.

But even if there is here sufficient governmental
to invoke the application of constitutional limitations,
submit that no constitutional rights are violated.
political expenditures in no way impair minority me-
First Amendment freedoms of speech or of associa-
Furthermore, they meet the Fifth Amendment re-
quirements of due process, since, in light of the special pu-
and problems of labor unions, such expenditures are
"unreasonable, arbitrary or capricious," but rather
means having "a real and substantial relation to the
sought to be attained." *Nebbia v. New York*, 291 U.S.

the trial court's improvisation of a new state policy against
shop contracts in the railroad industry (R. 265-266).

(2) The precise conclusion of the court below was that the
of union funds for certain political purposes violated ap-
constitutional rights (R. 250). The validity of union shop
agreements, as such, under section 2, Eleventh of the Railway La-
bor Act has of course already been upheld by this court. *Railway Em-
ployees' Department v. Hanson*, 351 U.S. 225. If appellees' consti-
tutional rights were imperiled by the use of funds collected pursu-
ant to valid contracts, we submit that a state court could properly
protect those rights only by enjoining the unconstitutional use of
union monies, and not by enjoining the enforcement of a contract
under applicable preemptive federal law, as was done here
(R. 106). See 32 Tulane L. Rev. 508, 511-512 (1958).

525. In support of this latter point we will adduce, as the principal contribution intended by this brief, historical and economic data to establish that political activity is a traditional and indeed a vital element in workers' programs for improving their economic status through unionism.

I. This Court Has Upheld The Constitutionality Of Section 2, Eleventh In Permitting Union Shop Agreements Even Though Dues Collected Thereunder Are Used For Political Purposes Opposed By Some Employees.

In *Railway Employees' Dept. v. Hanson*, 351 U.S. 225, this Court upheld the constitutionality of section 2, Eleventh of the Railway Labor Act. In so doing it reversed the Nebraska Supreme Court's decision in *Hanson v. Union Pacific R. Co.*; 160 Neb. 669, 71 N.W. 2d 526 (1955). Nebraska had found violations of the First and Fifth Amendments in section 2, Eleventh and in the union shop agreements executed under its authorization. Among the reasons advanced were the following:

1. An employee's freedoms were infringed in that "some of these labor organizations advocate political ideas, support political candidates, and advance national economic concepts which may or may not be of an employee's choice." 160 Neb. at 697.

2. An employee was denied due process in that the means selected had no "real and substantial relation to the object sought to be obtained * * * because by requiring him to pay initiation fees, dues and assessments he is required to pay for many things besides the cost of collective bargaining," 160 Neb. at 699.

The Transcript of Record before this Court in *Hanson* clearly showed that union dues were used for political purposes. These included the political education of union members, endorsement and support of individual candidates for public office, and manifold lobbying activities. (See Record

in No. 451, October Term, 1955, pp. 103-104, 125, 136, 141-144, 151, 254-256.)

In the face of such evidence, this Court unanimously rejected the constitutional attacks upon the validity of section 2, Eleventh and the union shop agreement identical to the one here challenged. Whether to require "the beneficiaries of trade unionism to contribute to its costs" was deemed a policy question for the Congress, not a matter of due process. 351 U.S. at 235. Payment of the "periodic dues, initiation fees, and assessments" authorized by the statute was equated with financial support relating "to the work of the union in the realm of collective bargaining," and a "more precise allocation of union overhead" was not demanded.² *Ibid.*

Despite the manifest proof of union political activities, this Court concluded that on the record before it there was "no more an infringement or impairment of First Amendment rights than there would be in the case of a lawyer who by state law is required to be a member of an integrated bar." 351 U.S. at 238. The Court reserved judgment on the question which would be presented if the "exaction" of dues was "used as a cover for forcing ideological conformity or other action in contravention of the First Amendment." *Ibid.* It is this guarded language which the Supreme Court of Georgia has seized upon to justify the decision below. (R. 251). We submit there is nothing whatsoever in the present record to suggest that "ideological conformity" has been imposed on railroad employees, either through financial exactions, or internal discipline, or any other means.

² That political activities indeed "relate to" and are "germane to" the union's work in the realm of collective bargaining will be confirmed by the historical and economic data contained in Part IV, *infra*, p. 14 ff.

In short, we are in full accord with the argument presented in much greater detail by appellants: the issues now before this Court are substantially identical with those before it in *Hanson*. The decision in *Hanson* should thus be dispositive of this case.³

II. No Governmental Action, And Hence No Constitutional Limitations, Are Involved In A Union's Use Of Its Funds For Political Activities.

The lower federal courts have consistently held that labor unions are private organizations and not governmental in character. Therefore an individual generally may not invoke the protection of the Constitution against them. *Courant v. International Photographers*, 176 F.2d 1000 (9th Cir. 1949), *cert. den.* 338 U.S. 943; *Williams v. Yellow Cab Co.*, 200 F.2d 302 (3d Cir. 1952), *cert. den.* 346 U.S. 840; *Otten v. Baltimore & O. R. Co.*, 205 F.2d 58 (2d Cir. 1953); *Wicks v. Southern Pacific Co.*, 121 F.Supp. 454 (S.D. Cal. 1954), *affd.* 231 F.2d 130 (9th Cir. 1956), *cert. den.* 351 U.S. 946; *Oliphant v. Brotherhood of Locomotive Firemen and Enginemen*, 262 F.2d 359 (6th Cir. 1958), *cert. den.* 355 U.S. 935, *cert. den.* 359 U.S. 962.

This Court itself has remarked, in *American Communications Assn. v. Douds*, 339 U.S. 382, 402:

"We do not suggest that labor unions which utilize the facilities of the National Labor Relations Board become Government agencies or may be regulated as such."

We are fully aware that in several cases this Court has held or has suggested that certain actions of private groups

³ So held in *Allen v. Southern R. Co.*, 249 N. C. 491, 107 S. E. 2d 125 (1959). See also the invariably hostile reception accorded the decisions below in 42 Minn. L. Rev. 1179 (1958); 32 Tulane L. Rev. 508 (1958); 3 Vil. L. Rev. 230 (1958); 45 Va. L. Rev. 44 (1959).

or organizations are subject to constitutional limitations. However, in each of these situations there was present one or more of the following three crucial elements:

1. The private body was exercising a basic state function, typically with the affirmative cooperation of the state. *Smith v. Allwright*, 321 U.S. 649 (running a primary political election); *Marsh v. Alabama*, 326 U.S. 501 (running a company town); *Terry v. Adams*, 345 U.S. 461 (running a preliminary primary political election).

2. The private body was invoking affirmative state action by seeking judicial enforcement or recognition of a private contract. *Shelley v. Kraemer*, 334 U.S. 1; *Barrows v. Jackson*, 346 U.S. 249.*

3. The private body had derived its power to act in a particular capacity or engage in a specific activity, usually monopolistic or exclusive, by virtue of a statute, and was regulated in the exercise of this power by governmental authority. *Steele v. Louisville & N. R. Co.*, 323 U.S. 192 (exclusive collective bargaining representative required by Congress to represent all members of a craft without discrimination); *Public Utilities Commission v. Pollak*, 343 U.S. 451 (public transport utility specifically permitted by governmental commission to operate radio programs); *Railway Employees' Department v. Hanson*, 351 U.S. 225 (exclusive collective bargaining representative expressly authorized by Congress to enter into union shop agreements otherwise invalid under state law).

None of the above bases for finding governmental action is present in this case.

* Both of these cases, involving racial restrictive covenants, may also have been influenced by considerations akin to element No. 1. In effect, private parties were seeking to exercise the usually public function of "zoning" property.

1. In spending funds to promote the political and legislative interests of itself and the employees it represents, the union is not fulfilling "a basic state function." See *Wilbur v. Yellow Cab Co.*, 200 F.2d 302, 307 (3d Cir. 1952), *den.* 346 U.S. 840. It is instead exercising some of the characteristic prerogatives of *private* persons in a society: the expression of political views and the support of political candidates. Indeed, this Court has suggested the strongest terms that any attempt "to prohibit the publication, by corporations and unions in the regular course of conducting their affairs, of periodicals advising members, stockholders, or customers of danger or a threat to their interests from the adoption of measures of election to office of men, espousing such measures," would raise the gravest constitutional questions. *United States v. CIO*, 335 U.S. 106, 121. See also *United States v. P. Local No. 481*, 172 F.2d 854 (2d Cir. 1949); cf. *United States v. UAW-CIO*, 352 U.S. 567.

2. Expenditure of union funds for political purposes does not involve state action in the enforcement of a shop contract. The contract itself has already been held valid by this Court in *Hanson*. And in *Hanson* the Court's concern was directed toward a possible attempt to impose "ideological conformity" through the "exaction of dues, initiation fees, or assessments" under the contract. 351 U.S. at 238. (Emphasis supplied.) What precise use a union subsequently makes of its funds is not determined by the terms of the union shop contract whereby employee dues and assessments are collected. That is a matter for determination by the majority of the union membership or by duly elected union officials acting under the union's governing rules. Such determination is thus wholly a matter of voluntary private action, with no state action involved.

3. The right or power of a union to make political expenditures is neither derived from nor regulated by s

or other governmental authority. Whenever this Court has indicated that union action might be subject to constitutional limitations, the *specific activity* in which the union was engaging would have been unauthorized or prohibited but for Congressional intervention. In *Steele* the union had been authorized to enter into contracts covering the wages, hours, and working conditions of persons not members, regardless of the wishes of such persons. 323 U.S. at 199. In *Hanson* it had been authorized to enter into union shop contracts regardless of state laws to the contrary. 351 U.S. at 231-232. The appellant unions here do not rely on federal law authorizing union political activities or expenditures, because there is no such law.⁵ They rely only on the right of a private organization to run its own affairs in the best interests of its membership, absent any properly applicable governmental controls.

There is of course nothing incongruous in concluding that some union activities may be subject to constitutional limitations while others are not. Although holding the union in *Steele* to the duty of nondiscriminatory representation of all employees in the craft, this Court expressly noted that "the statute does not deny to such a bargaining labor organization the right to determine eligibility to its membership." 323 U.S. at 204. In *Public Utilities Commission v. Pollak*, 343 U.S. 451, 462-463, this Court was careful to point out that it was not finding state action in a public transport utility's operation of a radio service merely because the public utility operated a transport monopoly under authority of Congress. To find that the specific activity of operating the radio service involved

⁵ No one is contending that the conduct at issue in this case would be covered by 18 U.S.C. § 610 (§304 of the Taft-Hartley Act), which prohibits unions as such from making contributions or expenditures in federal elections (R. 232). There are no similar state laws at issue here.

state action, the Court relied on the fact that the commission had conducted an investigation and expressly permitted the operation of the radio serially, even when unions have been most zealous of the constitutional standards of due process in the exercise of their statutory power as exclusive bargaining representatives, it has been recognized that "a union is essentially a private organization." *Murphy, J., concurring in Steele*, 323 U.S. at 208.*

III. Any Governmental Action Involved In A Union's Funds For Political Activities Violates Neither The First Nor Fifth Amendments.

Assuming *arguendo* that unions can be held to constitutional standards in the expenditure of funds for political purposes, we submit that there has been shown any violation of appellees' rights of free speech or assembly under the First Amendment, or of their right to due process under the Fifth Amendment.

A. FREE SPEECH AND ASSEMBLY UNDER THE FIRST AMENDMENT

There is nothing in the present record which indicates that the unions in any way have prevented any individuals from expressing their political views or supporting the political candidates of their choice.

* In urging that union political activities do not amount to governmental action so as to invoke constitutional protection, the Court naturally do not mean to suggest that union members are entitled to a remedy if union funds are misused for political or for other purposes. In addition to state common law obligations, union officials are under a statutory duty to hold a union's money and property "solely for the benefit of the organization and its members," and union members are empowered to sue in federal court to enforce this duty and recover any misapplied funds. See sec. 501 of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 535, 29 U.S.C. § 501.

inside or outside of union meetings, or through any means of communication. Free speech even in a government context can mean no more than that the minority is left wholly free to express its dissent. For the hallmark of democratic government is majority rule. And it is the majority that has charted the unions' political course. See *DeMille v. American Federation of Radio Artists*, 351 U.S. 139, 187 P. 2d 769 (1947), cert. den. 333 U.S. 872 (upholding power of a union operating under a union shop to levy assessments to oppose a right-to-work law); cf. *NLRB v. A. J. Tower Co.*, 329 U.S. 324, 331. Nor does freedom of assembly encompass the right to remain unorganized. *Senn v. Tile Layers Protective Union*, 301 U.S. 468. As this Court declared in *Hanson*, the union shop thus represents no more an infringement of First Amendment rights than state laws providing for an integrated bar. 351 U.S. at 238.

Appellants in their brief fully explore the relevance of the *DeMille* decision and of the numerous decisions on the status of the integrated bar. We will not burden the Court with a repetition of appellants' thorough demonstration that no First Amendment rights are impaired in the present instance.

B. DUE PROCESS UNDER THE FIFTH AMENDMENT

In *Webb v. New York*, 291 U.S. 502, 525, this Court enunciated the principle that "the guarantee of due process . . . demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained." The "relevant facts" of each situation determine the reasonableness of any given law or regulation. *Ibid.* To the same effect are *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 391; *Virginia R. Co. v. System Federation No. 40*, 300 U.S. 515, 558.

Assume that a union is engaging in government when it spends funds on political activities, and subject to the due process restrictions of the First Amendment. Nonetheless, the nature of this government and the nature and the scope of the activities surely can be determined only on the basis of the needs which prompted its formation.⁷ As was the political philosopher whose credentials antedate those of this Court: "A state arises out of the need of a kind."⁸ To determine the proper objects of a "state" or specialized government instrumentalities are now assuming a union is, and to determine what may reasonably be selected to attain those objects must look to the needs of *laboring* men.

In resolving due process questions in the field of this Court has consistently looked to history and to determine the reasonableness of Congressional action in meeting the needs of labor and management. *Co. v. System Federation No. 40*, 300 U.S. 515 (1932); *Way Employees' Department v. Hanson*, 351 U.S. 236, 239-240. In *Colgate-Palmolive-Peet Co. v. U.S.*, 355, 362-363, where the Court regarded the provision of the Wagner Act as presenting no question for Congress and not a constitutional issue, the history led to the following comments:

⁷ Even in imposing a "fiduciary responsibility" on unions, Congress recognized the necessity for "taking into account special problems and functions of a labor organization." 501(a), Labor-Management Reporting and Disclosure Act, 73 Stat. 535, 29 U.S.C. § 501(a). Specifically, Senators Kennedy and Kennedy made clear that the fiduciary provision was not intended to interfere with unions' political activities, "whatever the union is doing 'whatever the members want to do.'" 105 Cong. Rec. 5857 (April 23, 1959 daily ed.); 105 Cong. Rec. 164 (1959 daily ed.).

⁸ Plato, *The Republic*, bk. II, p. 60 (Modern Library).

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"One of the oldest techniques in the art of collective bargaining is the closed shop. It protects the interests of the union and provides stability to labor relations. To achieve stability of labor relations was the primary objective of Congress in enacting the National Labor Relations Act. Congress knew that a closed shop would interfere with freedom of employees to organize in another union and would, if used, lead inevitably to discrimination in tenure of employment. Nevertheless, . . . Congress inserted the proviso of § 8 (a) (1) which is not necessary for us to justify the policy of the Act. It is enough that we find it in the statute."

The attitude expressed in *Colgate-Palmolive-Peet* assumes a special relevance when we consider precisely what the appellees are presently asking this Court to hold. Section 2, Eleventh of the Railway Labor Act does not require unions and employers to enter into union security arrangements; it merely *permits* them to. In this respect the Railway Labor Act amendment authorizing the union shop simply is equivalent to a *pro tanto* return to the common law—where the closed shop was recognized as one of the "oldest techniques in the art of collective bargaining," one which apparently posed no constitutional problem to this Court. We find it astounding for appellees now to insist that, as a matter of constitutional due process, Congress cannot restore the situation existing at common law unless (1) Congress legislates a requirement that monies collected under a union shop agreement be used for political purposes; or (2) this Court imposes, or in effect legislates, such a requirement. And if a federal statute does not otherwise violate due process in restoring the common law rule to the extent of permitting union shop agreements, we wholly fail to see how such a statute violates due process simply because it supersedes conflicting state law. This is but the normal operation of the supremacy clause of the Constitution (Article VI, clause 2).

A look at the history of union political activity provides abundant proof that labor's interest in politics is its interest in the closed shop or the union shop. It provides full documentary support for legal conclusions that have concluded that "political activity is a labor-indispensable means of advancing the cause of labor";⁹ that "political activities may be regarded as a selective bargaining insofar as favorable legislation or the defeat of unfavorable legislation, strengthening the bargaining position";¹⁰ and that unions have a "direct interest" in lending financial support to economic causes.¹¹ In a word, even a brief survey of the economic data establishes that union political activity is wholly germane to a union's work in the real world of bargaining, and thus a reasonable means to the union's proper object of advancing the economic interests of the worker. To such a survey we now turn.

IV. Historical Survey And Analysis Of The Political Activities Of American Labor.

A. COLONIAL BEGINNINGS

American labor went into politics as early as

⁹ 65 Yale L. J. 724, 733 (1956).

¹⁰ 45 Va. L. Rev. 441, 447 (1959).

¹¹ 3 Vil. L. Rev. 230, 232 (1958).

¹² The classic work on American labor for the period prior to 1900 is Commons and Associates, *History of Labor in the United States* (1918, 1935). Standard one-volume surveys are Montgomery, *Organized Labor* (1945); Dulles, *Labor in America* (1955); Rayback, *A History of American Labor* (1956). The material for our sketch of the colonial period is drawn from Rayback, *supra*, c. III, "Colonial Politics: Labor and Politics," p. 36. On the specific question of unions and political activity, see Karson, *American Labor Unions and Politics*, 1954; Hardman and Neufeld, eds., *The House of Labor: A History of Labor and Political Activity*, p. 85 (1951); Bakke, *Unions, Management and the Public*, "Political Activity," p. 215 (1948).

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is drawn chiefly from
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political activities see
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Labor, pt. 2, "Unions
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A political organization known as the "Caucus," mostly of shipyard workers but also including c
sans and shopkeepers, won for a time a firm gr
town offices in Boston. Severe tightening of the
during the 1740s, which lowered the income of
workingmen, caused the Caucus to expand its hor
alliance of the Caucus and a party of debtor fa
cured control of the Massachusetts General C
established a land bank to provide relief throug
ance of paper money backed by real estate. The
later destroyed by the Board of Trade.

This early incident in a sense epitomizes the
labor to participate in political affairs. To p
wages and his pocketbook, the worker must do
bargain with his employer. He must join toge
other wage earners to secure a favorable politic
for advancing his economic interests. At times,
in periods of business depression, this may mean
direct government intervention. At all times th
must realize that other powerful groups will also
through organized political action to further their
in opposition to his. This, too, the members of th
found out.

In the middle of the eighteenth century politic
designed to protect civil liberties and to further
ers' demands for political equality with the privil
sprang up in New York, Philadelphia, Baltimore,
coastal towns.¹³ These groups were generally led
minded lawyers and merchants but the main body
of workingmen. Such organizations prov led in
the subsequent formation of the various Sons o
groups, which during the late '60s played a maj
demonstrations against the Stamp Act, the T

¹³ Rayback, *American Labor*, pp. 24-25.

Act, and other British measures viewed by a threat to their economy and their liberty poses it is not necessary to trace in detail how they helped counter the more conciliatory attitudes of the landed gentry toward the reform measures of the British Parliament, thus paving the way for the Revolution.¹⁴

B. UNDER THE NEW REPUBLIC

Though numerous local labor organizations existed to bargain with employers over wage scales and rules, labor played an insignificant role in the Revolutionary War and the late 1820s. In 1828 the Workingmen's Labor Party of Philadelphia was the first labor party in the modern world. It was an outgrowth of the Philadelphia Mechanics' Associations which had been formed the previous year as a result of a strike of building trades mechanics for a ten-hour day. When nothing but failure greeted their action, the demand for the ten-hour day took on a public employment plank in the political platform of the Workingmen's Party.

In 1829 New York workers formed a Workingmen's Party to protect the ten-hour day they had obtained. Compounded of Skidmore agrarian and radical elements, the New York workers' parties ran on protests against economic exploitation as well as degraded citizenship, strongly condemning the lack of consideration given in legislation to the rich through the influence of the aristocracy.

Between 1831 and 1834 there existed in the United States a new type of labor organization, partly political and partly economic.

¹⁴ *Id.*, pp. 32-36.

¹⁵ Millis and Montgomery, *Organized Labor, and Associates, History of Labor*, vol. I, p. 191.

¹⁶ Commons and Associates, *supra*, vol. I, p. 232.

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232.

economic, the New England Association of Farm-
chanics and Other Workmen.¹⁷ Emerging out of the
hour movement, the organization soon broadened
objectives. Public education, especially of children
factories, was assigned an importance equal to the
hours of labor.

All these workers' parties had short lives. But
efforts were not unavailing. Indeed, one of the principal
reasons for their decline was that other established
cal parties took up the causes that they had
vigorously espoused. To these early political efforts
organized workingmen has been attributed a large share
the credit for the establishment of the public school
the initiation of currency reforms, the abolition
prisonment for debt, the passage of mechanics' lien
and the removal from unions of the stigma of
conspiracy.¹⁸

In the mid-nineteenth century one of the primary
primary aims was the establishment of the ten-hour
Two distinct lines of attack were followed: the first
sisting of legislative appeals, and the second of trade
action. During the 1840s the first was most utilized
trade union demands upon employers for the ten-hour
did not become prominent until the '50s.¹⁹ As a result
numerous insistent petitions to the legislatures from
groups and their sympathizers, various kinds of trade
laws were passed in New Hampshire, Pennsylvania,
Rhode Island, California, and Georgia.

C. THE RISE OF NATIONAL UNIONISM

The phenomenal industrial expansion of the
States in the second half of the nineteenth century

¹⁷ *Id.*, p. 302 ff.

¹⁸ *Id.*, pp. 331-332; Dulles, *Labor in America*, pp. 46-50;
American Labor Unions and Politics, p. 4.

¹⁹ Commons and Associates, *History of Labor*, vol. I, p.

increasingly clear that "labor had to meet the challenge of nationwide industry by itself organizing on a nationwide basis."²⁰ In 1866 delegates from various local unions, trades assemblies, and national unions met in Baltimore and organized the National Labor Union.²¹ Legislative action to secure the eight-hour day was the principal aim of the NLU. Currency reform was also assigned high priority. Throughout its six-year existence, the NLU was continually engaged in lobbying activities before Congress and state legislatures for an eight-hour law. In 1868 Congress passed an eight-hour law for government employees and a law prohibiting further contraction of the currency, thus answering to a considerable extent the demands of the NLU. Eight-hour legislation was also passed in six states, but its value proved rather illusory.

After the great strikes of July 1877, in which workingmen found themselves confronted by hostile state and federal troops, numerous workingmen's political parties appeared in all the industrial centers of the nation. A Greenback-Labor Party was formed with a platform advocating currency reforms, shorter hours, national and state bureaus of labor statistics, prohibition of convict labor, and the suspension of the importation of servile labor.²² The aggregate Greenback-Labor vote in 1878 exceeded a million, and 14 candidates were elected to Congress. Independent political action by labor nearly succeeded in electing Henry George in the New York City mayoralty election of 1886; more significantly, the strong showing made by the labor forces resulted in the state legislature's passing a considerable number of protective labor laws.²³

²⁰ Dulles, *Labor in America*, p. 99.

²¹ Commons and Associates, *History of Labor*, vol. II, p. 96 ff.

²² *Id.*, pp. 244-245.

²³ *Id.*, pp. 453-454.

In 1881 a hundred representatives of national and local unions and regional and local assemblies formed the Federation of Organized Trades and Labor Unions of the United States and Canada. This was the forerunner of the American Federation of Labor, which formally came into existence in 1886. The 1881 conference drew up a thirteen-point legislative program.²⁴ Almost from the outset the American Federation of Labor adopted the pattern of nonpartisan political action championed by its president, Samuel Gompers. But this meant only that the Federation would not establish an independent party or ally itself with any political party. The AFL continued to seek the election of persons sympathetic to its needs and to press for legislation favorable to the worker.²⁵

²⁴ *Id.*, p. 324.

²⁵ Taft, *The A.F. of L. in the Time of Gompers*, pp. 289-292 (1957); David, "One Hundred Years of Labor in Politics," in Hardman and Neufeld, eds., *The House of Labor*, pp. 90-98. The traditional expression of AFL policy is quoted in Bakke and Kerr, eds., *Unions, Management and the Public*, p. 215:

"The partisanship of Labor is a partisanship of principle. The American Federation of Labor is not partisan to a political party, it is partisan to a principle, the principle of equal rights and human freedom. We, therefore, repeat: Stand faithfully by our friends and elect them. Oppose our enemies and defeat them; whether they be candidates for President, for Congress, or for other offices, whether Executive, Legislative or Judicial." (Emphasis in the original.)

Article II of the present AFL-CIO Constitution lists twelve objectives of the Federation. Two deal expressly with political activities:

"5. To secure legislation which will safeguard and promote the principle of free collective bargaining, the rights of workers, farmers and consumers, and the security and welfare of all the people and to oppose legislation inimical to these objectives."

"12. While preserving the independence of the labor movement from political control, to encourage workers to register and vote, to exercise their full rights and responsibilities of citizenship, and to perform their rightful part in the political life of the local, state and national communities."

Constitutions of national and international unions affiliated with the AFL-CIO contain analogous provisions.

At the convention of 1893 the Federation adopted political platform containing eleven planks. Among other things the program called for compulsory education, a legal eight-hour day, government inspection of mines and workshops, employer liability for injuries on the job, and the abolition of the sweating system.²⁶ The efforts of the A.F. together with the efforts of the Knights of Labor, the Populists, and various reform groups, were responsible for a substantial body of state labor legislation, which was enacted between 1886 and 1900.²⁷ This dealt primarily with labor arbitration, child labor and women's labor, factory and mine safety, responsibility for industrial accidents, and the eight-hour day.

D. REACTION, PROGRESS, AND NORMALCY

Unionism was flourishing at the turn of the century. Then abruptly the tide changed. Between 1902 and 1904 various employer groups launched a many-pronged "mass offensive" against the unions, proposing "to obliterate the whole concept of an organized labor movement from the pattern of American life."²⁸ Stiffening of attitudes at the bargaining table and a nation-wide campaign for the "open shop" were only the beginning. The press and the academic world were systematically enlisted to convince the public that "the enormous Labor Trust is the heaviest oppressor of the independent workingman": yet this appeal in the name of labor's rights only "thinly disguised an all-out drive against both union recognition and collective bargaining."²⁹

²⁶ Commons and Associates, *History of Labor*, vol. II, pp. 50-510; Taft, *The A.F. of L. in the Time of Gompers*, p. 71 ff.

²⁷ Rayback, *American Labor*, pp. 181-184.

²⁸ *Id.*, p. 214. See also Perlman and Taft, *History of Labor in the United States, 1896-1932*, p. 129 ff. (1935); Karson, *American Labor Unions and Politics*, pp. 33-34; Taft, *The A.F. of L. in the Time of Gompers*, pp. 262-264.

²⁹ Dulles, *Labor in America*, pp. 195-196.

Spearheading the attack was the National Association of Manufacturers. In 1902 the NAM caused the defeat of labor-supported eight-hour and anti-injunction bills before Congress. And in the 1904 elections the NAM scored signal successes in its efforts "to cut off labor's influence at the source by defeating congressmen and senators favorable to labor."³⁰ As a final blow, the unions about this time suffered a series of crippling reverses in the courts, through the application of injunctions and the antitrust laws.³¹

In 1906 the AFL responded to the onslaught by presenting a "Bill of Grievances" to Congress and the President, protesting against the failure to enact an effective eight-hour law, the abuse of the injunction, and the perversion of antitrust laws.³² Obtaining no satisfaction, the Federation then took more direct steps and campaigned actively to defeat labor's enemies in the elections of 1906, 1908, 1910, and 1912.³³

These efforts bore fruit. In 1914 Congress passed the Clayton Act and supplied unions with a measure of relief against labor injunctions and the antitrust laws. A year later the AFL gained one of its long-sought objectives, a federal law granting rights and protection to seamen on vessels of American registry. And during the pre-war heyday of the progressive movement organized labor successfully supported the enactment of a vast quantity of state labor legislation.³⁴

³⁰ Perlman and Taft, *History of Labor*, p. 152.

³¹ See Taft, *The A.F. of L. in the Time of Gompers*, pp. 266-271; Gregory, *Labor and the Law*, pp. 95-104, 205-209 (1958). On the use of injunctions against unions, see generally Frankfurter and Greene, *The Labor Injunction* (1930).

³² Taft, *The A.F. of L. in the Time of Gompers*, pp. 294-295.

³³ *Id.*, pp. 295-298; Karson, *American Labor Unions and Politics*, pp. 44-49, 53-73; Perlman and Taft, *History of Labor*, pp. 153-154, 156-158.

³⁴ Rayback, *American Labor*, p. 260 ff.

The pendulum once more swung against labor ~~decade~~ after the first World War. Strike after strike lapsed because, it was said, "the power of public opinion had strongly and definitely crystallized in favor of federal state and local police intervention in support of the employers and against the workers."³⁵ Organized labor's conspicuous political move during this period was its vigorous support of the independent candidacy of Robert F. Follette in the presidential election of 1924. The move polled nearly five million votes, and had a significant product: in 1926 the Congress elected in the La Follette campaign enacted the Railway Labor Act.³⁶

E. DEPRESSION AND THE NEW DEAL

The depression which swept the country in the wake of the stock-market crash of 1929 was almost immediately reflected in the elections of 1930. The new Congress, concerned with labor welfare, studied dozens of bills for public works programs, for maximum work-hours, and other means of federal relief.³⁷ In 1932 labor's fortuitous campaign against the indiscriminate use of the labor injunction was crowned with success through the passage of the Norris-La Guardia Act.

But the spectacular renaissance of American unionism was to await the coming of the New Deal. The AFL officially maintained neutrality in the 1932 presidential campaign; however, there is no doubt that the labor movement contributed significantly to the victory of the new movement.³⁸

³⁵ Dulles, *Labor in America*, pp. 230-231.

³⁶ Rayback, *American Labor*, pp. 300-301.

³⁷ *Id.*, p. 319.

³⁸ *Id.*, pp. 321-322; Dulles, *Labor in America*, p. 263. For a position of unions during this period, see generally Derb Young, eds., *Labor and the New Deal* (1957); Schlesinger, *Coming of the New Deal*, pp. 385-419 (1959).

The most important single expression of the pro-labor policy generally pursued under the New Deal was the passage in 1935 of the Wagner Act, protecting workers' rights to organize and bargain collectively. The Wagner Act was passed after a measure for safeguarding labor's organizational rights had been strongly urged upon Congress by President William Green of the AFL and by other union leaders. The Chamber of Commerce, the National Association of Manufacturers, and other industry groups had opposed such a bill.³⁹ Labor support of the New Deal during the congressional elections of 1934 also played a role in the passage of the Wagner Act and other favorable legislation.⁴⁰ New Deal welfare measures generally supported by organized labor included the Social Security Act and public works programs.

In the 1936 campaign labor groups, especially affiliates of the newly formed Congress of Industrial Organizations, invested a total of \$770,000.⁴¹ The funds were divided among various political committees and organizations, but substantially all went to aid in the re-election of Roosevelt. Labor was continuing the traditional policy of furthering its cause by helping out its friends.

The highly publicized role played by the CIO's Political Action Committee in the 1944 campaign was partially responsible for a thorough investigation by a special Senate Committee on expenditures in the federal elections of that year. The findings were a striking refutation of any suggestion of undue union influence. Democratic and Republican organizations and committees spent a total of

³⁹ Taft, *The A.F. of L. from the Death of Gompers to the Merger*, pp. 122-129 (1959).

⁴⁰ Rayback, *American Labor*, p. 333.

⁴¹ Overacker, *Presidential Campaign Funds*, pp. 50-51 (1946).

\$20,637,177.⁴² Labor expenditures were as follows:⁴³

Labor Expenditures In 1944 Federal Election

From union contributions to CIO-PAC	\$
From individual contributions to CIO-PAC	\$
National Citizens-PAC	\$
Total PAC	\$
Other labor groups	\$
Total all labor	\$

The total labor expenditure of 1.6 million dollars, both union dues and individual contributions counted for only 7.7 percent of the total Republican and Democratic federal expenditures of 20.6 million.

An even more startling revelation is that in the 1944 elections, 242 individuals representing 64 families made direct contributions to political organizations for an amount of \$1,277,121.⁴⁴ This means that expenditure on behalf of many millions of workers only slighted the contributions made by 64 families.

The immediate post-war years saw a vigorous expansion of collective bargaining. Engrossed in securing wage increases, unions made little effort to secure a political voice in the 1946 congressional elections. Only 33 million

⁴² *Report of Special Committee to Investigate Presidential and Senatorial Campaign Expenditures*, No. 101, 79th Cong., 1st sess., P. 79 (hereinafter cited as *Report*). As the report indicates, the total figure of 20.6 million dollars excludes the bulk of expenditures by local organizations and also omits expenditures for candidates for the House of Representatives.

⁴³ *Green Report*, p. 23, app. IV, pp. 102-121.

⁴⁴ *Id.*, app. VIII, pp. 140-151.

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\$ 478,498.82
\$ 470,852.32
\$ 378,424.78

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\$1,580,257.10

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and labor was dealt its worst defeat since the inauguration of the New Deal.⁴⁵ A year later the full dimension of labor's political setback were revealed by the passage of the Taft-Hartley Act. The new Act followed in large degree the suggestions of the National Association of Manufacturers—which later reported it had spent over 4 million dollars during 1947 in what appear to be propaganda-connected activities.⁴⁶

F. THE CONTEMPORARY SCENE

The enactment of the Taft-Hartley law spurred the union to renewed political activity, and led to the creation of the Labor's League for Political Education.⁴⁷ An intense campaign by the League and the CIO-PAC brought out a large labor vote in unprecedented numbers in 1948, assisting the surprise re-election of President Truman. But the League failed to achieve its primary purpose of repealing the Taft-Hartley Act.

In 1952 the AFL formally endorsed the presidential candidacy of Adlai E. Stevenson. In announcing its support, the Federation cited the need to replace the Taft-Hartley Act, to develop a public low-rent housing program, to extend social security, and to establish a health insurance program. The CIO also endorsed Stevenson in 1952. This endorsement was repeated in 1956 by the newly merged AFL-CIO. Labor generally had found unsatisfactory the record of the Eisenhower administration on unemployment, taxes, housing, federal aid to education, and fiscal

⁴⁵ Rayback, *American Labor*, p. 395 ff.

⁴⁶ *Id.*, p. 398; Cong. Q. Reports, p. 268 (1948).

⁴⁷ Taft, *The A.F. of L. from the Death of Gompers to the Present*, p. 311 ff. See also Kallenbach, "The Taft-Hartley Act and Political Contributions and Expenditure," 33 Minn. L. Rev. 1 (1948); Chang, "Labor Political Action and the Taft-Hartley Act," 33 Neb. L. Rev. 554 (1954); Laidler, "Labor's Role in American Politics," 36 Current History 321 (June 1959).

monetary measures. Redress once again was
polls.

Political contributions and expenditures
1956 general election campaigns were subject
comprehensive Senatorial study.⁴⁸ Tabulation
findings follow:

Direct Political Expenditures in 1956

	<i>Amount</i>
Republican	\$20,685,38
Democratic	\$10,977,79
Labor	\$ 941,27
Miscellaneous	\$ 581,27
Totals	\$33,185,72

**Individual and Group Contributions
of \$500 or More in 1956 Election**

Of Twelve Selected Families to:

Republicans

Democrats

Other

Total

Of Officials of 225 Largest Corporations to:

Republicans

Democrats

Other

Total

⁴⁸ See *Report of Senate Subcommittee on Pensions to Committee on Rules and Administration, Election Campaigns*, 85th Cong., 1st sess. (1957).

⁴⁹ For convenience the tabulations are drawn from *Almanac*, pp. 187-189 (1957).

was sought at the
s relating to the
bjected to a most
ulations⁴⁹ of the

Elections

nt	Percent
387	62.3
790	33.1
271	2.8
277	1.8
<hr/>	
725	100

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ions

.....	\$1,040,526
.....	\$ 107,109
.....	\$ 6,100
<hr/>	
.....	\$1,153,735
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.....	\$1,816,597
.....	\$ 103,725
.....	\$ 16,525
<hr/>	
.....	\$1,936,847

Privileges and Elec
tration: 1956 General
(1957).
drawn from Cong. Q

Of Officials of 13 Professional, Business, and Similar Groups to:

Republicans	\$
Democrats	\$
Other	\$

Total \$

Of National and International Union Officials to:

Democrats	\$
Republicans	\$

Total \$

Of Labor Groups to:

Democrats	\$1
Republicans	\$

Total \$1

As can be seen, the political contributions of a dozen families of means exceeded the total direct expenditures by workers during the 1956 campaign. If labor's direct expenditures are added to its political contributions, the total still barely exceeds 2 million. This is almost entirely offset just by the contributions of the officials of the 225 largest corporations. And the labor outlay of 2 million dollars was merely 6.4 per cent of the 31.7 million dollars spent by the Republican and Democratic parties and their candidates in the 1956 campaign. When it is considered that twelve families in the United States are capable of bringing to bear in an election campaign well over half as much money as organized labor, which represents 16 million workingmen and their families, some idea may be grasped of the magnitude of the task faced by workers in presenting their views to the public.

in seeking the election of persons sympathetic to their interests.

Labor today must attempt to operate with the assurance that it can secure groups with opposing interests expend the necessary amounts to achieve their purposes through the use of money. For example, between 1947 and 1950, General Motors expended more than 4.5 million dollars to tax-exempt organizations and trade associations.⁵⁰ The American Medical Association undertook a \$1 million dollar "political war chest" in its campaign to defeat the Truman medical insurance bill, which was favored by organized labor.⁵¹ In the year of 1954 over 2 million dollars of the expenditure went for a "public information program" to influence times employers and employer-minded groups through their influence over the media of mass communication, a feat unmatched by the workingman.⁵² By contrast, in the crucial fiscal year preceding the passage of the proposed Landrum-Griffin bill in 1959, which was a period of nation-wide efforts to enact state labor laws, the AFL-CIO's Legislative Department and its Committee on Political Education together spent only 1.15 million dollars.⁵⁴

G: ANALYSIS

The preceding historical sketch provides a clear demonstration that political and legislative action is necessary to protect the interests of the workingman.

⁵⁰ *Report on Expenditures by Corporations and Organizations*, H. Rep. No. 3137, 81st Cong., 2d sess., p. 763 (1950).

⁵¹ Hyde and Wolff, "The American Medical Association: Purpose and Politics in Organized Medicine," 1012 (1954).

⁵² Key, *Politics, Parties, and Pressure Groups*.

⁵³ See, e.g., Chase, *Sound and Fury*, pp. 128-129, for a discussion on Freedom of the Press, *A Free and Open Society* (1947).

⁵⁴ AFL-CIO, *Report of the Executive Council*.

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ugh political action.
General Motors gave

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"In 1949-1950 the
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its successful cam-
insurance program,

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the NAM's budget

ram."⁵² And at all
groups have an in-

munication wholly un-
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ess.; Cong. Q. Almanac,

ical Association: Power,
ne," 63 Yale L. J. 938,

Groups, p. 100 (1958).
128-129 (1942); Commis-

and Responsible Press
ouncil, pp. 18-19 (1959)

essential part of any realistic effort by workers to
and maintain their bargaining position, and to
atmosphere favorable to their general economic
advancement. But we need not rely upon our own
tation of the data available. A host of disinter-
economists stand ready to verify this conclusion.⁵³

Professor Lloyd G. Reynolds of Yale sums up t
in this way:

"It is often debated whether unions should
politics'; really, they have no choice in th
They are automatically in politics because
under a legal and political system which
generally critical of union activities. The c
suit and the injunction judge have been a pr
unions from earliest times. A minimum of
activity is essential in order that unions ma
to engage in collective bargaining on even t

In addition to emphasizing that labor cannot ev
effectively in collective bargaining without
amount of political action, Reynolds discusses
practical reasons for labor political activity. Fir
objectives in which labor has an interest cannot b
at all through collective bargaining. These inclu
education, social insurance of various kinds,
housing, and effective anti-depression measures.
certain objectives which might be achieved thro
tive bargaining can be achieved much faster thro
lation. This category embraces legislation cover
num wages, maximum hours, and the eliminatio

⁵² In addition to the authorities discussed in 'the'
economists stressing the need for union political act
Sturmthal, "Pressure Group or Political Action," and
"Labor Parties in the United States," in Bakke and
Unions, Management and the Public, pp. 215-218, 218

⁵³ Reynolds, *Labor Economics and Labor Relations*,
(1959):

labor. Reynolds assigns prime responsibility for the progress of social legislation to the "increasing political awareness of trade unions."⁵⁷ At the same time, however, he concludes that the increase in the political influence of organized labor has been offset by a simultaneous increase in lobbying by groups directly opposed to labor. The net result is that the workers' political power "is still not very great vis-à-vis other groups."⁵⁸

Two other scholars, Daugherty of Northwestern and Parrish of Illinois, give as the reason for unionists' interest in politics their recognition of "their inability to cope with anti-union employers on equal terms on the economic field, [and] . . . their inability to protect their members against the vicissitudes of depression," together with their discovery of "what a great difference a favorable government made in their fortunes."⁵⁹

Princeton economist Richard A. Lester even defines a labor union in political terms, stating that it is "a political organization representing the members' job interests and their viewpoints on political and social issues."⁶⁰ He emphasizes that unions "perform educational functions and help to reconcile conflicts of interest," and so serve "a beneficial role in a democratic society."⁶¹

CONCLUSION

We submit that there is no constitutional question in this case because there is no governmental action involved in a union's use of its funds for political activities. At the very most we find "questions not of constitutional validity but of policy in a domain of legislation peculiarly open to con-

⁵⁷ *Id.*, p. 328.

⁵⁸ *Id.*, p. 82.

⁵⁹ Daugherty and Parrish, *Labor Problems of American Society*, p. 408 (1952).

⁶⁰ Lester, *As Unions Mature*, p. 14 (1958).

⁶¹ *Id.*, p. 20.

ficting views of policy." Frankfurter, J., concurring in *Railway Employees' Department v. Hanson*, 351 U.S. 225, 239. If Congress in permitting the union shop in the railroad industry has somehow tinged union political spending with a trace of governmental color, then we say: a wealth of historical and economic data nevertheless establishes that such spending, under the circumstances, is not unreasonable or arbitrary, but rather a means having a real and substantial relation to the economic advancement of the worker via stable collective bargaining. There is thus no violation of constitutional due process.

For the foregoing reasons and for the reasons stated in the brief for appellants, the judgment of the Supreme Court of Georgia should be reversed and the case remanded to that Court, with instructions to reverse the judgment of the Superior Court of Bibb County with remittitur to the Superior Court directing it to vacate its judgment and order of December 8, 1958 and to dismiss the case.

Respectfully submitted,

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Associate General Counsel, AFL-CIO
 815 16th Street, N.W.
 Washington 6, D. C.

February 1960

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No. 258

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Office-Supreme Court, U.S.

FILED

MAR 8 1960

JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

October Term, 1959

INTERNATIONAL ASSOCIATION OF MACHINISTS, *et al.*,

Appellants,

—v.—

S. B. STREET, *et al.*,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF GEORGIA

**OBJECTION OF INDIVIDUAL APPELLEES TO
MOTIONS FOR LEAVE TO FILE BRIEFS
AS AMICI CURIAE**

E. SMYTHE GAMBRELL

W. GLEN HARLAN

CHARLES A. MOYE, JR.

TERRY P. MCKENNA

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Of Counsel

March 8, 1960

IN THE

Supreme Court of the United States

October Term, 1959

No. 258

INTERNATIONAL ASSOCIATION OF MACHINISTS, *et al.*,

Appellants,

—v.—

S. B. STREET, *et al.*,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF GEORGIA

**OBJECTION OF INDIVIDUAL APPELLEES TO
MOTIONS FOR LEAVE TO FILE BRIEFS
AS *AMICI CURIAE***

Appellees object to the motions of the Railway Labor Executives' Association (RLEA) and the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) for leave to file briefs as *amici curiae* on the merits of this case.

Neither the RLEA nor the AFL-CIO has shown any interest in the case which cannot and will not be adequately represented by the appellants. Indeed, all of the appellant unions are members (and represent a substantial part of the total membership) of both organizations, and no rea-

son is suggested by either organization as to who could not or would not be fully presented by such organizations.

While RLEA and AFL-CIO now profess a view in this case, neither organization participated or participate in the Georgia Superior Court or Supreme Court proceedings.

Neither RLEA nor AFL-CIO has shown or "facts or questions of law that have not been, for believing that they will not adequately be by the parties . . ." as required by this Court's order to file a brief as *amicus curiae*. Their arguments, as set forth in their proposed briefs, are in substance with those of the appellants, vary in manner of expression.

As for facts, RLEA and AFL-CIO refer to in this case only in the most cursory fashion, and Court's attention to no evidence which is not discussed in the brief of appellants. AFL-CIO to present as "facts" its own argumentative various publications dealing with the history of labor and its participation in politics. Such publications are not a part of the record in this case. Such publications therefore are not "facts" in any legally significant sense, but, even if they were factual and a part of the record, AFL-CIO has failed to show (1) that they are different from the historical materials urged on by appellants; (2) that they could not have been as well by appellants; or (3) that they have any "relevancy to the disposition of the case" (Rule 10 involves, not the right of a union to participate but the claimed right of unions to force minority

on pain of losing their jobs, to associate themselves with and contribute financially to the propagation of political beliefs which they oppose.

For the foregoing reasons, appellees have withheld consent to the filing of briefs as *amici curiae* by the RLA and AFL-CIO, and respectfully submit that the Court should deny the motions of those organizations for leave to file such briefs.

Respectfully submitted,

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March 8, 1960

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No. 256. 4

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959.

INTERNATIONAL ASSOCIATION OF MACHINISTS et al.
Appellants,

v.

S. B. STREET et al.,
Appellees.

On Appeal from the Supreme Court of Georgia.

BRIEF

For Railroad Company, Appellees, Georgia Southern
and Florida Railway Company, et al.

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No. 258.

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1959.

INTERNATIONAL ASSOCIATION OF MACHINISTS et al.,
Appellants,

v.

S. B. STREET et al.,
Appellees.

On Appeal from the Supreme Court of Georgia.

BRIEF

**For Railroad Company, Appellees, Georgia Southern
and Florida Railway Company, et al.**

When this case was pending before the Supreme Court of Georgia as *Looper et al. v. Georgia Southern and Florida Railway Company*, as counsel for the railroad company defendants in error (appellees here), we filed a statement in lieu of a brief, as follows:

"The railway companies . . . for which we appeared in the lower court and on behalf of which we make this statement, are the so-called 'railroad defendants' or 'railroad defendants in error.'"

"The court will perceive that the contest here is between the union defendants and the three individual plaintiffs in error who are employees of one of the railway companies named. The defendants in error for whom we appear take no part in that contest. This statement is filed simply because we did not wish

this Court to think that the case was being ignored or overlooked, and is filed to state our position, to wit, that we will abide the judgment of the Court."

That case was decided by the Supreme Court of Georgia June 10, 1957. (213 Ga. 279, 99 S. E. 2d 101.) The judgment of the trial court was reversed. After a trial in the Superior Court of Bibb County, the case again reached the Supreme Court *sub nomine* International Association of Machinists et al. v. S. B. Street et al., No. 20,428.

Thereupon we filed, on March 24, 1959, a statement repeating our statement on the previous appeal, and adding to it these sentences:

"That case was decided by the Court June 10, 1957. (213 Ga. 279.) Judgment was there rendered upon a 'precise question' stated at pages 284-5 of the opinion. Upon the trial of the case pursuant to that judgment, we introduced no evidence with respect to this question. Our position then, as it is now, is just as it was when we filed our previous statement with the court on or about April 4, 1957."

Our position here is just as it was when we filed our statements with the Supreme Court of Georgia. We will abide the judgment of the Court.

Respectfully submitted,

.....
CHARLES J. BLOCH,

.....
ELLSWORTH HALL, JR.,

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JOHN B. HARRIS, JR.,
Attorneys for "Railroad Appellants"

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INTERNATIONAL ASSOCIATION OF MACHINISTS, *et al.*,*Appellants,*

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S. B. STREET, *et al.*,*Appellees.*

ON APPEAL FROM THE SUPREME COURT OF GEORGIA

BRIEF FOR APPELLEES, S. B. STREET, NANCY M. LOOPER, HAZEL E. COBB, J. H. DAVIS, MRS. EDNA FRITSCHER, MRS. ELIZABETH FERGUSON, AND OTHERS SIMILARLY SITUATED

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March 16, 1960

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ON APPEAL FROM THE SUPREME COURT OF GEORGIA

BRIEF FOR APPELLEES, S. B. STREET, NANCY M. LOOPER, HAZEL E. COBB, J. H. DAVIS, MRS. EDN. FRITSCHER, MRS. ELIZABETH FERGUSON, AND OTHERS SIMILARLY SITUATED

Opinions Below

The opinion of the Supreme Court of Georgia (R. 2470)¹ here on appeal is reported at 215 Ga. 27, 108 S. 1

¹The transcript of Record printed for the use of this Court will be so cited. The printing of the entire record on appeal this case would have cost in excess of \$100,000. Consequently the parties entered into a stipulation designating certain portions of the record to be printed, and providing that "each [party] consents to any of them referring in brief or oral argument to the Supreme Court of the United States to the portions of the record certified to said Court that have not been printed." References to unprinted pages of the official transcript on file with this Court will be "Tr.—" followed by a further page citation where a transcript page contains a document with more than one page.

2d 796 (1959). An earlier opinion by the Supreme Court of Georgia in the same case is reported *sub nom. et al. v. Georgia Southern & Florida Railway Co.* at 213 Ga. 279, 99 S. E. 2d 101 (1957). The findings, conclusions, order, judgment and decree of the trial court of the Superior Court of Bibb County, Georgia (R. 101-1) are not reported.

Constitutional Provisions and Statutes Involved

In addition to the statutory provisions quoted in the appellants' brief, the following Amendments to the United States Constitution are involved in this case:

Amendment I.

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Amendment V.

"No person shall be held to answer for a capital or otherwise infamous crime, unless on a present indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, in actual service in time of War or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment IX.

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Amendment X.

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Questions Presented

The major question presented to the Court for decision is:

May unions, under cover of a union shop contract authorized by the Railway Labor Act, force minority employees to *accept* and *pay* for political and ideological representation by unions whose views are repugnant to and opposed by such minority employees?

Subsidiary questions are:

(1) Did this Court's decision in *Railway Employees Department v. Hanson*, 351 U. S. 225 (1956) reserve judgment on the constitutional issues here presented as it expressly stated?

(2) Are the wide-ranged political and ideological activities of appellant unions "germane to collective bargaining"?

(3) Is the application of the union shop contract to individual appellees' governmental action affecting their constitutional rights in view of the statutory authorization to negotiate such a contract and the intervention of government agencies in encouraging and providing enforcement machinery for, that contract?

(4) Are the individual appellees deprived of their constitutionally-protected political freedom and freedom

¹ The phrase "individual appellees" will be used herein to denote not only the six individuals specifically named as appellees but also the class represented by them consisting of all other employees of the Southern Railway System similarly situated (R. 166-167), unless the context requires otherwise.

of association by being forced to choose jobs and compulsory contribution to their political foes?

(5) Are the individual appellees deprived of constitutionally-protected freedoms of speech by being compelled to contribute to views which are repugnant to them?

(6) Are the funds extracted from individuals under the union shop contract used to promote political conformity?

(7) Are the individual appellees deprived of constitutionally-protected right to work by being compelled to choose between their jobs and compulsory contribution to the program of their political foes?

(8) Are the individual appellees deprived of property without due process of law by being compelled to contribute to the advancement of political and ideological objectives which are repugnant to them?

(9) Have the appellants been deprived of due process in the courts below?

Statement of the Case¹

This case involves two union shop contracts in their relevant terms (R. 205-217), between the unions making up the Southern Railway System (sometimes referred to as "the railroad") and the unions (hereinafter referred to as the "appellants") organized under the Railway Labor Act ("the Act") which represent the nonoperating employees of the Southern Railway System for collective bargaining purposes. The

¹ This statement is made as "concise" as seems appropriate regard to this Court's Rules. Because of the extent of the record, and the consequent necessity for a brief adequate resumé of it, a more complete summary of the proceedings and evidence below is set forth in the brief. The Court is urged to examine that summary and the more fully complete outline of the proceedings and evidence.

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to the program of

deprived of their
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signed February 27 and April 1, 1953, to be effective
15, 1953, and are referred to herein as "the union
contract" or "the union shop agreement."

The union shop contract provides in substance
nonoperating employees shall, "as a condition of their
continued employment" by the railroad, become members
of the union "representing their craft or class within
(60) calendar days of the date they first perform
uncompensated service as such employees after the effect
of this agreement, and thereafter shall maintain mem-
bership in such organization" (R. 205-206).

On June 5, 1953, this action was commenced
in the Superior Court of Bibb County, Georgia,
(1) an injunction against the railroad and the ap-
pealants to prevent enforcement of the union shop contract
(2) a declaration that the union shop contract is
unconstitutional, null and void.

The action was brought by certain individuals as
plaintiffs on behalf of "all those employees or former
employees of the railroad defendants affected by and
bound to the union shop agreement who also are opposed
to the use of the periodic dues, fees and assessments which
have been, are and will be required to pay to support
ideological and political doctrines and candidates for
legislative programs . . . or for other purposes other than
the negotiation, maintenance and administration of
agreements concerning rates of pay, rules and working
conditions, or wages, hours, terms or other conditions
of employment or the handling of disputes relating
thereto" (R. 167).

The "similar situation" in which the members of
the class find themselves is typified by the named
Mr. S. B. Street. As alleged in the amended
petition (R. 74):

"Petitioner S. B. Street is an employee of the
defendant New Orleans and Northeastern Railroad
Company, with seniority rights dating from November
1917. Plaintiff Street at all times since the effective

of the union shop agreement has said railroad defendant in position of agreement, his present assignment as General Clerk. Plaintiff Street lives in the city of Hattiesburg, Mississippi.

"Under the terms of the union shop agreement plaintiff Street was required as a condition of continued employment against his will to join the protests, in April, 1957, to join the Brotherhood of Railway and Steamship Employees, Local 100, that organization a reinstatement of his employment. He has been required as a condition of continued employment since that date to pay to the union \$2.25 per month to June, 1958, and since June, 1958. The total amount Street has been required to pay under the union agreement as a condition of continued employment aggregates \$154.50, as of the date of the amendment."

The petition as amended alleged, among other things (R. 75), that "the dues, fees and assessments of the individual appellees 'are and will be required under the terms of the union shop agreement to be used in substantial part by the labor union to support financially candidates for election as officers, petitioners and the class they represent, to give support, and to oppose candidates favorable to the union and the class they represent.'" It was further alleged that such dues, fees and assessments had been used "in substantial part to propagate and promote economic ideologies espoused by the labor union defendants, but which are repugnant to the interests of the class they represent", and to attempt to "induce plaintiffs and the class they represent" to vote for and otherwise support the candidates of the unions and "to finance and otherwise support active and expensive political organizations."

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represent" and "to disseminate through printed
propaganda media political and economic views
by petitioners, in an effort to convert to those vie-
bers of the general public, including railroad e-
and employees of other businesses." As amended,
tion also sought a money judgment (R. 83-84).

The individual appellees further allege (R.
"the activities hereinabove referred to" are "not
to the collective bargaining activities of the labor
ization defendants, are not reasonably incident ther-
are not necessary thereto."

After numerous procedural steps, the trial co-
missed the case on motion by appellants (R. 219) fo-
to state a cause of action (R. 221). Upon ap-
Georgia Supreme Court reversed and remanded
for trial, saying in part (*Looper v. Georgia So-*
Florida Railway Co., 213 Ga. 279, 284-285, 99 S. E.
(1957)):

"We go now to the single point raised w-
Supreme Court has, we believe, clearly ind-
still open for decision. The petition of these n-
employees alleges that they have been notifi-
cordance with the law and the contract of emp-
that unless they become members of a union
60 days their employment will be terminate-
alleged that the union dues and other payme-
will be required to make to the union will
to 'support ideological and political doctrines
didates' which they are unwilling to support
which they do not believe, and that this wil-
the First, Fifth and Ninth Amendments of the
tution. While *Railway Emp. Dept. v. Han-*
U. S. 225, *supra*, upheld the validity of a clo-
contract executed under § 2, Eleventh, that
clearly indicates that that court would not ap-
requirement that one join the union if his
tions thereto were used as this petition all-

is there said (headnote 3c): 'Judgment is *reserved* [italics ours] as to the validity or enforceability of a union or closed-shop agreement if other conditions of union membership are imposed or if the exaction of dues, initiation fees or assessments is used as a cover for forcing ideological conformity or other action in contravention of the First or Fifth Amendments.' We must render judgment now upon this precise question. We do not believe one can constitutionally be compelled to contribute money to support ideas, politics and candidates which he opposes. We believe his right to immunity from such exactions is superior to any claim the union can make upon him."

The evidentiary record in the trial court consists of a comprehensive stipulation of facts (R. 165-217), numerous depositions (R. 108-152), two requests for admissions and responses thereto (R. 277-323), all contained in the printed record, and a third request for admissions and responses thereto, 588 documentary exhibits submitted by both parties, and certain items read into the record by consent, none of which are printed here for the reasons explained above, *supra*, p. 1, n. 1.

Among other things, the stipulation of facts establishes (R. 176):

"The periodic dues, fees and assessments which plaintiffs, intervening plaintiffs and the class they represent, have been, are and will be required to pay under the terms of the union shop agreement hereinabove referred to, have been, are being, and will be used in substantial part for purposes other than the negotiation, maintenance, and administration of agreements concerning rates of pay, rules and working conditions, or wages, hours, terms and other conditions of employment, or the handling of disputes relating to the above, but to support ideological and political doctrines and candidates which plaintiffs, intervening plaintiffs, and the class represented by them, were, are, and will be opposed to and not willing to support voluntarily."

The stipulation further sets out (R. 176 ff.) the precise "mechanism by which the periodic dues, fees and assessments required to be paid under the terms of the union shop agreement were, are and will be used in substantial part to support ideological and political doctrines and candidates for public office which plaintiffs, intervening plaintiffs, and the class represented by them, are not willing to support".

Included with the appellant unions in this "mechanism" are the following:

1. The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) to which each of the appellant unions belongs and to which each appellant union pays a per capita tax amounting to 5¢ per month from funds paid in by members in the form of periodic dues, fees and assessments (R. 177, 178, 317-318).

2. The Committee on Political Education (COPE) of the AFL-CIO (R. 135-152 and 319).

3. The Department of Legislation of the AFL-CIO (R. 126-131).

4. The Railway Labor Executives' Association (RLEA) to which all of the appellants belong, through their chief executive officers; and whose chief activity is in the field of federal legislation (R. 179, 180-181).

5. Railway Labor's Political League (RLPL) composed of the chief executive officers of appellants and other labor organizations (R. 182-184).

6. The Nonpartisan Political League of the International Association of Machinists (MNPL) (R. 193-195).

7. "LABOR", the weekly newspaper published by Railway Labor's Cooperative and Educational Publishing Society, of which all but one of the appellants are part owners (R. 189-191).

As will be seen in the stipulation and voluminous other evidentiary materials of record, the foregoing "mechanism" is used to pour vast sums of money into political campaigns and lobbying activities on the federal, state and local levels, such funds being channeled through RLPL (R. 182-188); MNPL (R. 192-198); COPE (R. 131-152, 277-299, 315); "LABOR" (R. 189-191); RLEA (R. 179-181); and the AFL-CIO Department of Legislation (R. 125-131). The foregoing are merely representative record references, as the record contains a great amount of evidence of the political, legislative and propaganda activities of the appellants through these and other agencies. A more complete summary is contained in the Appendix to this brief.

On the basis of the voluminous and undisputed evidence of record showing the use by appellants of the funds exacted, and to be exacted, from the individual appellees for political and ideological purposes, the trial court found, among other things (R. 103-104) that:

1. Such funds "have been, and are being, used in substantial amounts . . . to support the political campaigns of candidates for the offices of President and Vice President of the United States, and for the Senate and House of Representatives of the United States, opposed by plaintiffs and the class they represent, and also to support by direct and indirect financial contributions and expenditures the political campaigns of candidates for State and local public offices, opposed by plaintiffs and the class they represent."

2. Such funds "have been and are being used in substantial amounts to propagate political and economic doctrines, concepts and ideologies and to promote legislative programs opposed by plaintiffs and the class they represent."

3. Such funds "have also been and are being used in substantial amounts to impose upon plaintiffs and the class they represent, as well as upon the general public, con-

formity to those doctrines, concepts, ideologies and programs".

4. Such exaction and use of funds are "not reasonably necessary to collective bargaining or to maintaining the existence and position of said union defendants as effective bargaining agents".

5. The unions "by their commingling of funds used for collective bargaining purposes and activities and those used for the complained of purposes and activities set forth above have made it impossible to segregate the amount of dues collected from plaintiffs and the class they represent which are and will be used for collective bargaining purposes from those which are and will be used for the complained of purposes and activities set forth above".

6. "Said exaction and use of money and said union shop agreements and their enforcement are contrary to the Constitution, the law and public policy of this State, and are contrary to the statutes or laws of other states in which the defendant railroads operate."

7. "Said exaction and use of money, said union shop agreements and Section 2 (eleventh) of the Railway Labor Act and their enforcement violate the United States Constitution which in the First, Fifth, Ninth and Tenth Amendments thereto guarantees to individuals protection from such unwarranted invasion of their personal and property rights (including freedom of association, freedom of thought, freedom of speech, freedom of press, freedom to work and their political freedom and rights) under the cloak of federal authority."

Accordingly, the trial court (R. 105-106) permanently enjoined enforcement of the union shop agreements as to the individual appellees and the class they represent so long as appellants continue to engage "in the improper and unlawful activities described". The trial court also declared (R. 106) Section 2, Eleventh of the Railway Labor Act to

be "unconstitutional to the extent that it permits, or applied to permit, the exaction of funds from plaintiffs and the class they represent for the complained of purposes and activities", and to that extent declared the union shop agreements null and void as violating "the above-mentioned personal rights guaranteed by the Constitution of the United States and the laws and policy of this State and other States as set forth above." The Court also ordered repayment of dues, fees and assessments previously paid by the individual appellees.

The Supreme Court of Georgia affirmed (R. 249), saying among other things (R. 269):

"One who is compelled to contribute the fruits of his labor to support or promote political or economic programs or support candidates for public office is just as much deprived of his freedom of speech as if he were compelled to give his vocal support to doctrine he opposes. Abraham Lincoln asserted a similar view when he said: 'I believe each individual is naturally entitled to the fruits of his labor, so far as it in no wise interferes with any other man's right.' There is a common saying, that 'Money talks—sometimes louder than the spoken word.' In the case at bar, the personal convictions of the plaintiffs on political and economic issues are being combatted by the use of their financial contributions to foster programs and ideologies which they oppose."

The case was appealed to this Court (R. 271-275), proper jurisdiction being noted on October 12, 1959 (R. 276).

Summary of Argument

I A. In *Railway Employees' Department v. Hanson*, 351 U. S. 225 (1956) this Court expressly reserved decision as to whether employees forced to join a railroad union pursuant to a union shop contract authorized by Section 2, Eleventh of the Railway Labor Act (45 U. S. C. § 152, Eleventh) could also be forced, under cover of the union shop contract, to contribute to support the union's political or ideological activities with which they disagree. The Court made this reservation by pointing out (351 U. S. at 235) that "The financial support required relates . . . to the work of the union in the realm of collective bargaining" and that if charges were "in fact imposed for purposes not germane to collective bargaining, a different problem would be presented." The Court further said that the use of "compulsory membership . . . to impair freedom of expression" was a problem "not presented by this record." The Court promised that "If other conditions are in fact imposed, or if the exaction of dues, initiation fees, or assessments is used as a cover for forcing ideological conformity or other action in contravention of the First Amendment, this judgment will not prejudice the decision in that case." It is absurd to argue, as appellants do, that this Court in *Hanson* ruled *sub silentio* and by implication on the grave constitutional issues here involved, without evidence on the subject, and while the Court was solemnly saying that it was reserving such issues for later unprejudiced decision. Here, for the first time, the Court is presented with *evidence of specific* political and ideological uses of funds exacted under the union shop contract from specific employees who oppose the ideas and candidates for which their money is being used by the unions. The Court can properly rule on vital constitutional issues such as are here involved "only when the interests of litigants require the use of this judicial authority for their protection against actual interference. A hypothetical threat is

not enough." *United Public Workers v. Mitchell*, 350 U.S. 75, 89-90 (1947). The "actual interference" absent in *Hanson* is present here and requires the "judicial authority".

I B. Appellants say, in effect, that everything in the political and ideological fields is, in a general sense, for the benefit of the working man, and therefore falls within "collective bargaining" within the meaning of that phrase in the *Hanson* case. Such a contention, if true, would render meaningless the Court's phrase as to the reservation of judgment on constitutional issues. If nothing could be foreign to collective bargaining, appellants' activities relative to control of off-shore price supports, foreign aid, and the like, are foreign to it. Appellants' present contention is belied by their stipulation (R. 191) that their political activities do not involve and are unnecessary to the negotiation, ratification and administration of agreements concerning wages, hours of pay, rules and working conditions, or wages, hours, and other conditions of employment, or the handling of disputes relating to the above." Can activities be foreign to collective bargaining which "do not involve anything unnecessary to" it? Even as to matters which may benefit the laborer, the unions are not engaged in *collective bargaining*—negotiations *with the employer*—*collective contract*—when they use *totally different* means, such as legislation, to attain the desired object. The legislative history and judicial interpretation of the National Labor Act and related statutes show conclusively that "collective bargaining" is limited to the *employer-employee* relationship and does not extend to various other matters whereby the laboring man may express or benefit. Congress has no constitutional power to require an employer to *accept* and *pay* his "collective bargaining representative" as also his political and ideological activities.

II A. The union shop contract is authorized by the National Labor Act, was encouraged and virtually c

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governmental agencies, and is enforceable through gov-
 mental tribunals; and therefore it represents governme-
 action affecting the constitutional rights of minority
 ployees under the Bill of Rights. This Court held in
Hanson case (351 U. S. at 231-232) that the union's
 contract is governmental action, as it has "the imprim-
 of the federal law upon it and, by force of the Suprem-
 Clause of Article VI of the Constitution, could not be n-
 illegal or vitiated by any provision of the laws of a Sta-
 Thus, since federal law is supreme and no state law c-
 challenge it, the presence or absence of contrary state
 is immaterial. Even so, the Georgia courts have ruled
 union shop contract as here applied to be contrary to
 law of Georgia, and that judicial declaration of Geo-
 law, together with the right-to-work statutes of other sta-
 must be overridden by Section 2, Eleventh of the Rail-
 Labor Act in order for the union shop contract to be e-
 tive. That contract is a manifestation of federal power
 the further respects that (1) it arises from the uni-
 statutory authorization (comparable to "legislative" pow-
 to bind unwilling minorities to a collective contract (*St*
v. Louisville & N. R.R., 323 U. S. 192, 204 (1944); *Amer*
Communications Ass'n v. Douds, 339 U. S. 382, 401
 (1950)); (2) it results from an electoral process a-
 lutely and unreviewably controlled by a federal age-
 (*Smith v. Allwright*, 321 U. S. 649 (1944); *Switchm*
Union v. National Mediation Board, 320 U. S. 297 (1944);
 (3) it effectuates a governmental policy (*Railway*
employees' Dept. v. Hanson, *supra*); (4) it results from
 ernment-imposed duties and powers of the union to bar-
 with the employer; (5) the government itself interven-
 through the National Mediation Board and a Presiden-
 Emergency Board, to encourage if not to compel the sign-
 of the union shop contract; and (6) the contract depen-
 on federal tribunals for its enforcement (*Brotherhood*
Railroad Trainmen v. Chicago River & Indiana R.R.,
 U. S. 30 (1957); *Slocum v. Delaware L. & W. R.R.*,

U. S. 239 (1950); *Shelley v. Kraemer*, 334 U. S. 1; *Barrows v. Jackson*, 346 U. S. 249 (1953); and *Alabama*, 326 U. S. 501 (1946)).

II B 1. Use of the union shop contract to compel minority employees to contribute to the support of views and candidates which are repugnant to them. One of their constitutional right to political freedom. The Court has repeatedly recognized that "political rights and 'political freedom' are protected by the First, Fifth and Tenth Amendments to the Constitution. *United Workers v. Mitchell*, *supra*; *American Communist Ass'n v. Douds*, *supra*; *Sweezy v. New Hampshire*, 357 U. S. 234 (1957). These rights have also been referred to as protected as the rights of "political belief and association." *Watkins v. United States*, 354 U. S. 178, 188 (1957). *National Association for Advancement of Colored People v. State of Alabama*, 357 U. S. 449 (1958). When the union use funds extracted from the minority to broadcast and amplify views repugnant to the minority, the dissenting voice of the latter is rendered inaudible. Even such restrictions on political freedom and freedom of association have been condemned. *Wieman v. Updegraff*, 344 U. S. 183 (1952): No impairment can be tolerated since political freedom is vital to the "integrity of our electoral process." Not less, the responsibility of the individual citizen in the successful functioning of that process." *United Auto Workers v. International Union of Marine and Shipbuilding Workers of America*, 352 U. S. 567, 570 (1957).

II B 2. The use of dues taken forcibly from minority employees to support beliefs and candidates which they wish to oppose deprives the minority of their constitutional rights to freedom of speech and press. "To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical." *Statute of Virginia for Religious Freedom* (1786). "The right of free speech and of writing is secured by the Constitution, and incident thereto is the correlative right of silence, not less important nor less sacred." *West Virginia v. Barnette*, 319 U. S. 263 (1943).

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Georgia, C. & N. Ry., 94 Ga. 732, 22 S. E. 579 (1893).
forcing minority employees to speak through the loud c-
lective voice when they wish to remain silent or supp-
views which conflict with the views of the union, the a-
pellants discourage individual expression, enforce stan-
ardization of ideas (*Terminiello v. City of Chicago*,
U. S. 1, 4 (1949)), and impose intellectual peonage. Su-
action is analogous to forcing "citizens to confess by wo-
or act their faith" in tenets which they disbelieve. *W-*
Virginia State Board of Education v. Barnette, 319 U.
624, 642 (1943). Pecuniary encouragement or discoura-
ment of expression—and particularly of political expr-
sion—through governmental action is unlawful. *Spei-*
v. Randall, 357 U. S. 513 (1958). And to force expressi-
of political beliefs is as clearly unconstitutional as to fo-
expressions of religious belief, *Everson v. Board of E-*
cation, 330 U. S. 1 (1947); *Thomas v. Collins*, 323 U.
516, 531 (1945). In other areas, such as the fields of tax-
tion, radio and television, and in the Corrupt Practi-
Act, Congress itself has recognized the need for avoidi-
direct or indirect governmental interference with politi-
expression. The argument of appellants that compulso-
state bar association membership is analogous to the pr-
ent case is wholly unsound. No decision has been cited,
can be found, which holds or even suggests that an in-
grated bar could engage in political activities such as the
of the appellant unions.

II B 3. Appellants say that their activities, finan-
with funds exacted from minority employees, could nev-
result in "forcing ideological conformity" within the me-
ing of this Court's phrase in the *Hanson* case since e-
mployees are always free to believe what they wish no mat-
what they are told or how forcefully, guilefully or rep-
tiously they are told it. However, the record shows th-
the minority employees are forced to purchase subscri-
tions to the unions' publications which bombard them w-
political and ideological propaganda. This is analogous

the repetitious reading of the Bible in school was condemned in *Schempp v. School District Township, Pa.*, 177 F. Supp. 398, 404-406 (E.D. Pa. 1959), where the court said: "The argument made by the respondents that there was no compulsion ignored the forces of social suasion." This Court has held that the power of government may not be used to coerce religious beliefs—even on a nondiscriminatory basis. *Abington v. Board of Education*, 379 U. S. 130 (1964). *Abington v. Board of Education*, 333 U. S. 203 (1948) (biased political and ideological propaganda "captive audience"—the conscripted membership—through the exercise of governmental authority. Propaganda is intended to be, and is, effective. Propaganda is full wording and endless repetition.

II C. By compelling the minority employees to join the union between their constitutionally-protected rights and the union (*Greene v. McElroy*, 360 U. S. 474, 492 (1959)) the right to political freedom and freedom of speech and association, the union shop contract operates to deprive employees' right to work. Government may not require a "qualification" on the right to work which has no connection with the applicant's fitness or capacity to perform the job (*Schwartz v. Board of Bar Examiners*, 353 U. S. 232, 238-239 (1957)) or which is "arbitrary and discriminatory" (*Wieman v. Updegraff*, *supra*) if there is no "rational connection" between the requirement and the exacted of the minority employees and their right to work for the railroad. The requirement to support political and ideological views which is "arbitrary and discriminatory" and a violation of their right to work.

II D. The exaction of union dues from employees to propagate political doctrines and to support political candidates repugnant to them represents a taking of property without due process of law. *Consolidated Gas Utilities Corporation v. Consolidated Gas Utilities Corporation*, 305 U. S. 79-80 (1937). A state could not require b

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individual citizens contribute to a particular party; and it could not condition the right to work engage in business on such a contribution. When the use governmental power to compel membership a dition of the right to work, they cannot then use ship dues to support a political party, or other engage in politics. If they wish to engage in political ideological programs, they must obtain their financial *voluntarily*, and not through government compulsion.

III. Appellants have no basis for their claim procedures followed in the Georgia courts deprive of due process. For the most part, their procedural objections relate to routine matters clearly within the discretion of the courts below, and no prejudice from any procedures. The claim that appellants harmed because the litigation was processed as a "class action" is without merit, and flies in the face of stipulation (R. 166-167) that the class was appropriately represented, and that employees representing all appellants were included in the class.

ARGUMENT

I

The *Hanson* case expressly reserved for future decision the constitutional question here presented.

Section 2, Eleventh of the Railway Labor Act, as amended by Act of January 10, 1951, 64 Stat. 1238, 45 U. S. C. § 162, permitting execution of union shop contracts with railroad employees, was considered by this Court for the first time ago in the case of *Railway Employees' Department v. Hanson*, 351 U. S. 225 (1956). In view of the relevance of that decision to the issues here presented, and in view of appellants' persistent misunderstanding of that decision, it is necessary to clarify by way of introduction what the case *did* decide, and what the Court there *did not* decide.

The *Hanson* case presented a broadside attack on Section 2, Eleventh of the Railway Labor Act. There the union shop agreement had no effect, and the plaintiffs sought to avoid joining it, claiming that the Act was beyond the commerce clause, in conflict with the "right to work" clause of the Nebraska constitution, and in violation of the First Amendment of association, the non-members obtained a writ of habeas corpus in the Nebraska state court, based on the claim that Section 2, Eleventh was unconstitutional.

On appeal, this Court reviewed the history of the Act, and concluded that Congress has the power under the Constitution to require the benefits of collective bargaining to contribute to its cost. "It has never been attempted here", wrote Mr. Justice Brandeis, by a majority of eight. "The only conditions to membership authorized by §2, Eleventh of the Railway Labor Act are payment of 'periodic dues, initiation fees, and assessments.' The assessments that may be lawfully include 'fines and penalties.' The financial burden thus relates, therefore, to the work of the union in collective bargaining" (351 U. S. at 235). It is, of course, that the decision of the Nebraska Supreme Court is erroneous, and that the Nebraska law's guarantee of the right to work was validly superseded. Mr. Justice Brandeis concurred in a separate opinion.

The Court made clear that it was ruling that a railroad employee could be required to contribute to the cost of collective bargaining, a requirement which a union is by law obliged to afford. "We only require a requirement for financial support of the collective bargaining agency by all who receive the benefits of it. This is the power of Congress under the Commerce Clause. It does not violate either the First or the Fifth Amendment" (351 U. S. at 238).

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With respect to broad constitutional issues, Mr. Justice Douglas, speaking for the Court, said (351 U. S. 238):

"If 'assessments' are in fact imposed for purposes germane to collective bargaining, a different result would be presented.

"Wide-ranged problems are tendered under the First Amendment. . . .

"On the present record, there is no more a question of First Amendment rights than there is in the case of a lawyer who by state law is required to be a member of an integrated bar. It is a question whether compulsory membership will be used to impair the free exercise of expression. But that problem is not presented by this record. Congress endeavored to safeguard against that possibility by making explicit that no compulsory membership may be imposed except as to periodic dues, initiation fees, and assessments. If those conditions are in fact imposed, or if the use of such dues, initiation fees, or assessments is used for forcing ideological conformity or other unconstitutional contravention of the First Amendment, this Court will not prejudice the decision in that case. For the reasons stated narrowly on §2, Eleventh of the Railway Labor Act, we only hold that the requirement for financial support of the collective-bargaining agency by all union members, if the benefits of its work is within the power of Congress under the Commerce Clause and does not violate the First or the Fifth Amendments. We do not express an opinion on the use of other conditions to require the maintenance of membership in a labor organization under a union or closed shop agreement (if such is added).

Mr. Justice Frankfurter in his concurring opinion (351 U. S. at 242):

"The Court has put to one side situations which are before us for which the protection of the First Amendment was earnestly urged at the bar. I, too, am put to one side."

Despite the clarity of the language of both opinions quoted above, appellants now contend that the basic constitutional question at issue here was decided in *Hanson*. In the face of these express disclaimers they insist that the *Hanson* decision is a direct holding that unions constitutionally may use funds exacted from employees under a union shop agreement for political and ideological purposes opposed by such employees.

That is a most remarkable contention. It amounts to a charge that this Court ruled *sub silentio* and by implication on constitutional issues, which it recognized as being of gravest importance, in the admitted absence of any evidence as to the existence of the issues or of the manner in which any individual rights might be affected. And, appellants say, the Court did decide those very constitutional issues while solemnly reserving them for later decision, and while emphasizing the reassurance that "this judgment will not prejudice the decision in that case." We are confident that this Court did not thus lightly dispose of the fundamental human rights at stake in this case.

The *Hanson* record and opinion clearly show that the constitutional questions now before the Court are not foreclosed by *Hanson* but are expressly left open in that decision.

It is obvious that the Court meant to leave something open—but if the interpretation urged by the appellant unions were correct, nothing would be left open.

The appellants say (their brief, pp. 38-39), that the *Hanson* case holds "that *no* allocation of the actual use of initiation fees and dues need be made, but that they *would be* regarded as used for a purpose that 'relates' 'to the work of the union in the realm of collective bargaining'" as long as they are simply initiation fees and dues (*italics added*).¹

¹ The appellants conveniently ignore (their brief, pp. 40-41) the fact that the "allocation" to which Mr. Justice Douglas referred in the *Hanson* case was not "allocation" between costs of collective bargaining on the one hand and unrelated activities on the other. The reference is rather to the question whether the costs of col-

Appellants then say that only "assessments" were contemplated by the Court's reservation of judgment with respect to "purposes not germane to collective bargaining." If that were the correct interpretation of the Court's opinion, then obviously the reservation of the "different problem" concerning "assessments . . . for purposes not germane to collective bargaining" would be illusory. If "dues" can be used, without restriction, for any purpose, then the unions have a simple problem of nomenclature. By calling any increased charges "dues" they can avoid the necessity for making "assessments" and thus accomplish as many "purposes not germane to collective bargaining" as they see fit without creating a "different problem" which this Court would examine under the reservation in the *Hanson* case.

Clearly this Court did not intend to say that anything which the unions chose to call "dues" may be assessed against unwilling employees and be spent for any purpose, and with this Court's blessing as being related "to the work of the union in the realm of collective bargaining", while only those charges which the unions are willing to designate as "assessments" must be spent exclusively for collective bargaining. The Court certainly would not become so enmeshed in labels as the appellants suggest, and the Court would not offer such an illusion as purported "protection" for the minorities forced to contribute to the unions under the union shop contract.

The fact is that the Court has said quite plainly that "the financial support required" by the Railway Labor Act "relates, therefore, to the work of the union in the realm of collective bargaining," and that if the unions actually de-

lective bargaining must be allocated to each member represented in accordance with his precise benefit from the work of the representative. Thus the opinion states (351 U. S. at 235): "The financial support required relates, therefore, to the work of the union in the realm of collective bargaining. No more precise allocation of union overhead to the individual members seems to us to be necessary" (*italics added*).

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course, appellants themselves recognize that if th
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the appellants say (their brief, p. 40): "Indeed, if
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then under the terms of the union shop agreeme
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The statute itself prohibits discharge of an e
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failure to pay "periodic dues, initiation fees and
ments," and this the Court specifically recognized.
Court said (331 U. S. at 238) that "if the exaction
initiation fees, or assessments is used as a cover fo
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decision in that case." Clearly the Court was no

that no violation of freedom of speech would result so long as the unions simply demanded and collected "periodic dues, initiation fees, and assessments," regardless of the use made of funds thus exacted.

The Court did not create a mirage which will vanish into thin air when minority employees approach with evidence of impaired freedom of expression and of enforced ideological conformity. This case meets precisely the description of the Court's reservation of judgment in the *Hanson* case.

Appellants erroneously assert that the record in *Hanson* included materials relating to their political and legislative activities (appellants' brief, pp. 19, 37 ff.). The materials referred to there are merely (1) union constitutions, (2) excerpts from the legislative history of the Union Shop Amendment, and (3) arguments based on the above in Hanson's brief. None of those items in *Hanson* could be, or is, evidence of the *actual* exaction from an *actual* employee of sums *actually* used for political and ideological purposes which he opposes.¹

In striking contrast, the evidence here is specific and direct, as will be shown below.

Appellants recklessly assert that, in overruling the Supreme Court of Nebraska, this Court "had before it for decision the precise issue decided by the court below" (appellants' brief, p. 38), and that the Nebraska Court was reversed "for doing just what the Georgia Court did, namely, enjoining enforcement of a union shop agreement because part of the fees and dues is used for political, legislative, charitable, and welfare purposes of which some employees may not approve" (appellants' brief, p. 41).

¹ In *Hanson* the Union Pacific Railroad was enjoined by the state court from placing the union shop agreement into effect. Although the Southern Railway originally was enjoined from placing that agreement into effect (Tr. 33), the injunction was dissolved in early 1957 before the trial and some individual appellees were required then to become union members (R. 166, 203-204). Others have filed a supersedeas bond and would, of course, be required to pay back dues if their court action were to fail.

Appellants have not correctly interpreted, or the holding of the Supreme Court of Nebraska, or upon which the decision of that court was reversed.

The Nebraska Supreme Court held that the Union Amendment violated the Bill of Rights to the Constitution in two ways:

(1) That Amendment infringed upon the right of association protected by the First Amendment. That infringement; in the eyes of the Nebraska Supreme Court was found in the authorization¹ of agreements which compel employees to become members of a labor organization (labor organization) against their will. 669, 71 N. W. 2d 526.²

(2) That Amendment violated the due process clause of the Fifth Amendment to the United States Constitution in that it authorized an agreement compelling covered employees to pay for maintenance fees besides the cost of collective bargaining; the agreement did not have a real and substantial relationship to any legitimate object of Congressional legislation under the Commerce power. 1600, 71 N. W. 2d 526.

This Court concluded that full membership in the union appellants was not required by the union amendment, and that only a formal membership evidenced by payment of periodic dues, fees and assessments was required. Therefore, and on that basis, it found no violation of the freedom of association protected by the First Amendment, since the only "association" involved was the payment of a *quid pro quo* for services rendered by the union in collective bargaining. (See *e.g.*, 351 U. S. 23).

¹ The question of governmental action is discussed in the last section of this brief.

² The question of freedom of association was argued before the Nebraska Supreme Court by all parties (except Charles L. Bradford and Allen, *et al.* as *Amici Curiae*) only on the basis that the individual's right to join or not to join a labor union was a matter of the more subtle basis of political and ideological rights which the instant record presents.

As to the alleged violation of the due process clause of the Fifth Amendment, this Court apparently felt that payment of periodic dues, fees and assessments was a yoke or stick which Congress, acting under the Commerce Clause, reasonably could select to measure the financial support of the collective bargaining agency, the union, in the absence of a showing that charges are actually assessed "for purposes not germane to collective bargaining" (351 U.S. 235).

Those holdings in *Hanson* did not reach the question whether a specific use of funds exacted under a union shop agreement from specific employees might be in violation of either the First or Fifth Amendment. Such a situation is now before this Court for the first time.

We wish to make clear that we are not relitigating the issue presented in the *Hanson* case. The Court there held that an employee could be compelled to contribute financially to the support of the *collective bargaining* activities of his collective bargaining representative. We believe that the Court in *Hanson* traced the outer limit of permissible restriction of individual freedom of association and expression and the constitutionally-protected right to work. It is to be noted that, even on an international level, such individual freedoms and rights are recognized. Thus, in the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations in 1948, it is provided (Article 23, Section 1):

"Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment."

In the same international document it is further provided (Article 20):

"1. Everyone has the right to freedom of peaceful assembly and association."

"2. No one may be compelled to belong to an association."

In *Hanson*, the Court plainly did not go beyond a prohibition of forced association to the extent of *pro-forma* "membership"—that is, forced contribution of dues used for *collective bargaining*. To go beyond that prescribed in *Hanson* and to force the minority employees to contribute to the support of ideologies and political candidates which he opposes—as here confidently asserted by appellant unions—would unlawfully deprive him of freedom of political association and activity and freedom of speech and press, while also depriving him of property without due process of law.

A. The Record in the *Hanson* Case, Unlike This Case, Contained No Evidence of Political and Ideological Activities of the Unions Supported by Forced Contribution of Dues by Minority Employees.

Appellants argue that the Court in *Hanson* had before it the "same type of evidence" as is in the record of this case (see appellants' brief, pp. 36-38). That statement is incorrect as we shall show.

Appellants assert (brief, p. 37) that the record in this case "showed that union dues were used to pay for subscription to *Labor*", referring to the record in this Court, No. 451, October Term, 1955, p. 143, Exh. 10. But the reference is only to a provision appearing in the Constitution and By-Laws of the Brotherhood of Maintenance of Way Employees. There was not in that case, as there is here, a tracing of actual money from a specific employee through his local lodge to the national organization and thence into "*LABOR*", culminating in the following expenditures in the instant case (R. 189):

"46. Each of the labor union defendants (except the Masters, Mates and Pilots and National Marine Engineers Beneficial Association) was and is a part of an organization known as *Railway Labor's Protective and Educational Publishing Society*, which publishes a weekly newspaper, '*Labor*.' . . .

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"47. 'Labor' derives its principal financial support from subscriptions to the newspaper without which subscriptions none of its activities would be possible.

"48. The general funds of the labor union defendants, except for the American Train Dispatchers Association, have been, are, and will be used to purchase subscriptions to 'Labor' for officers and members of such labor union defendants. Such subscriptions constitute a substantial portion of 'Labor's' revenues.

Appellants assert (brief, p. 37) that the record in *Hanson* showed "that Labor issued special election editions urging support of given candidates for public office", the same record citation being given. But the only reference "LABOR" at that citation is to a provision in the same Constitution and By-Laws of the Brotherhood of Maintenance of Way Employees:

"The weekly newspaper 'Labor' will be furnished to the Grand Lodge to all members in good standing within the Grand Lodge."

On page 38 of their brief, appellants assert that *Hanson's* brief in Docket 451 "describes the manner in which the weekly publication 'Labor' issues special editions urging support for specific political candidates," citing page 69 of that brief. The statement in *Hanson's* brief reads:

"The use of special editions of the newspaper 'Labor,' published by the Railway Labor Executive Association, to help elect or defeat candidates for public office is explained in the appendix to the case of *United States v. C. I. O.*, 335 U. S. 106 at 156, 68 L. Ed. 1849 at 1879, 68 S. Ct. 1349 (1948). The writer of this brief remembers when such special editions of 'Labor' were used to help elect Republicans to the United States Senate from Nebraska. But what authority does the United States Congress have to deprive Democrats of their right to work in the railway industry unless they contribute their dues money to help elect Republicans to public office?"

The Court will note there is no *evidence* what to in support of that statement on brief. Evidence was totally lacking on the issues here presented, in contrast, in the instant case we have the following relations of fact (R. 189-190):

"49. Free space in 'Labor' has been, it is used to induce contributions to the fund of Labor's Political League, and the Committee for Political Education (COPE).

"Substantial portions of each issue are devoted to 'Labor' to legislative subjects and, during certain periods, to political subjects, dealing with the names of candidates to public office.

"50. Also in the newspaper 'Labor', the columns therein, the reporting is of a type and is designed to influence the reader toward the particular political philosophy of that publication, but to which plaintiffs are not plaintiffs, and the class they represent are not plaintiffs.

• • • • •

"51. The legislative members of one major party are mentioned favorably in the columns of the newspaper 'Labor' far more often than are the legislative members of the other major political parties. The legislative members of one major party and its legislative and administrative program are generally extolled while the legislative and administrative program of the other major political party's legislative and administrative program are generally condemned and criticized.

"52. Without cost to a particular party, the newspaper 'Labor' publishes and distributes at charge numerous copies of special editions to extoll the virtues of that particular party. The great majority of such special editions are prepared and used for the benefit of the one major political party.

"During the 1956 general election campaign, the newspaper published and distributed 16 such special

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of the general public. 'Labor' customarily h
pared and so distributed such special editions
tion years at least since 1940, and such special
are currently being prepared for 1958 general
campaigns."

In addition, the instant record contains actual co
the special editions published and distributed in t
general election campaigns.² They are:

Plaintiffs' Exhibit	Special Edition For
No. 149 (Tr. 550)	Wayne Morse
No. 150 (Tr. 551)	Frank Church
No. 151 (Tr. 552)	Alan Bible
No. 152 (Tr. 553)	Warren Magnuson
No. 154 (Tr. 555)	Thomas Hennings
No. 155 (Tr. 556)	Carl Hayden
No. 156 (Tr. 557)	John Carroll
No. 157 (Tr. 558)	Mike Monroney
No. 158 (Tr. 559)	John Bennett
No. 159 (Tr. 560)	Richard Stengel
No. 161 (Tr. 562)	Thomas Dodd
No. 162 (Tr. 563)	Lee Metcalf and Leroy Anderson
No. 163 (Tr. 564)	Earle Clements

¹ Seventeen editions featuring eighteen candidates, as i
out when we received the documents provided for in part
of the Stipulation—see also paragraph 79j of the Stipul
Facts (R. 163, 202).

² We hope the Court will examine these exhibits in the
Transcript filed with the Court. They were not printed
of the tremendous cost that would have entailed.

Plaintiffs' Exhibit

Special Edition

No. 164 (Tr. 565)

Claude

No. 165 (Tr. 566)

William

No. 166 (Tr. 567)

Joseph

No. 167 (Tr. 568)

Robert

A box appearing on the first page of the read, typically, as follows (Plaintiffs' Exhibit)

"A WORD OF EXPLANATION"

"LABOR has many regular readers. This newspaper needs no introduction. I would like to say a few words about other good people of your state. It is to be sure there be no misunderstanding about this."

"LABOR is owned by 15 Standard Organizations with more than a million subscribers in the United States and Canada. LABOR is a non-profit, has never printed a paid advertisement, and is supported entirely by the subscription of its readers."

"This special edition is issued as a tribute to Oregon's great liberal Senator Wayne Morse. Neither he, nor any of his friends, nor the Union of rail labor, has contributed a penny to the cost of this edition. It comes to you as a gift from American railroad men and women. We believe the noble character and career of Senator Morse and men like him are needed more than ever."

"Railroaders have many reasons for supporting Wayne Morse, but we recommend him to all voters on still broader grounds. He is a true friend, not only of workers in all industries, but also of farmers, small business men, teachers, government employes, the general public, of honesty and decency in government, of Constitutional liberty—of all that make our country prosperous, strong and free."

"That's why LABOR publishes this special edition, telling Oregon voters about our faithful Senator Morse."

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faith in your Senator

It should be unnecessary to state that the position does not in any wise suggest the merits of particular parties or personalities. The attack is based upon the simple principle that no one is compelled by law to support *any* party or candidate.

The frankly partisan approach of these special editions is best illustrated by Plaintiffs' Exhibit 167 (The special edition supporting Mayor Wagner in his fight against Attorney General Javits for the Senate seat vacated by Senator Lehman. The issue in that case was explained to New York voters in a front page article which follows:

"The big issue in the current Senate campaign is just this: Should Empire State voters send to Albany an outstanding liberal—Robert Wagner—or should they play on the same gressive [sic] Senate strategy as Herbert Lehman has helped to lead so long?"

"Or should New York voters send to the Senate a Republican who'll be forced willy-nilly into a leadership role under the reactionary Old Guard team that dominates the GOP?"

"That's the issue, and no one has explained it more clearly than Bob Wagner. 'Every Republican,' says Bob Wagner, 'when he talks to liberal audiences in the election season, says he too is a liberal. But the fact is, a Republican CAN be an effective liberal—they won't.'"

Another article in that same edition stated:

"The undoubted 'party line' assistance given to the Republican senator from New York would be the chief reason for organizing the Senate under the GOP Old Guard. The second big reason why the rail unions are urging New Yorkers to elect Bob Wagner instead."

"We have singled out Exhibit 167 for special mention because it demolishes the claim of appellants that they support the friends of labor regardless of party."

¹ See, for example, Plaintiffs' Exhibit 369 (Tr. 858) appearing in the "American Federationist" published

That type of evidence was *not* in the *Hanson* record.

Appellants assert (brief, p. 37) that the *Hanson* record showed that "union dues were otherwise used for political purposes," citing the *Hanson* record, pp. 254-256, Ex. 31. That reference simply is to excerpts from the Congressional Record—House—January 4, 1951, a part of the legislative history of the Union Shop Amendment relating to matters occurring *before* the enactment of that amendment. Though such materials may aid in the interpretation of the Union Shop Amendment, they are not *evidence* of the political use of employees' funds. Similarly, the citations intended to support appellants' reference to legislative representatives and lobbying at page 37 of their brief are merely to (1) the Constitution of the Brotherhood Railway Carmen of America, (2) the Constitution of the Grand Lodge, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and (3) the Constitution of the Brotherhood of Maintenance of Way Employees, with no evidence of actual use of any money of any employee.

Appellants seem to think that mere argument of counsel is sufficient to cause this Court to decide constitutional questions, for they reproduce certain section headings and characterize certain argument appearing in *Hanson's* brief in Docket 451 (appellants' brief, pp. 37-38). While counsel for *Hanson* was making the most of a point which apparently occurred to him during the appellate stages of the case, the brief itself refers only to Constitutions and By-Laws of some of the appellants, legislative history of the Union Shop Amendment, the memory of counsel, and

GIO, December 1956 edition, which states, in part: "Another new member of the Senate will be New York's Republican Attorney General Jacob K. Javits, who voted against the Taft-Hartley Act and cast many other votes favorable to working people when he was in the House." See also Tr. 719: "The trade union movement had endorsed the Democratic candidates, Senator Clements in Kentucky . . . but it is believed that . . . Cooper . . . will be on the side of the people in future votes . . . Cooper had a fairly liberal record when he was a senator."

some newspaper articles not of record. It is perfectly obvious that this Court could not have been expected to pass upon a weighty constitutional question in *Hanson* without one shred of evidence that the right of any individual had been, or was about to be, infringed. *Shelley v. Kraemer*, 334 U. S. 1, 8-9 (1948); *Corrigan v. Buckley*, 271 U. S. 323, 329-330 (1926).

The *Hanson* record supplied no foundation or evidence for consideration of the application and effect of Section 2, Eleventh on the plaintiffs there. The union shop agreement had not taken effect. The plaintiffs had not yet joined the union, and consequently had paid no initiation fees, dues, or assessments. Perforce, the union had not applied any of the plaintiffs' money for political purposes, since none had been received. Whether political contributions might in the future be demanded of the plaintiffs remained wholly in the realm of conjecture and speculation. Hypothetical cases and predictions offer an inadequate base for constitutional adjudication. The salutary rule foreclosing decision in such a circumstance was explained in *United Public Workers v. Mitchell*, 330 U. S. 75, 89-90 (1947):

"As is well known, the federal courts established pursuant to Article III of the Constitution do not render advisory opinions. For adjudication of constitutional issues 'concrete legal issues, presented in actual cases, not abstractions' are requisite. This is as true of declaratory judgments as any other field. These appellants seem clearly to seek advisory opinions upon broad claims of rights protected by the First, Fifth, Ninth and Tenth Amendments to the Constitution. . . . Appellants want to engage in 'political management and political campaigns,' to persuade others to follow appellants' views by discussion, speeches, articles and other acts reasonably designed to secure the selection of appellants' political choices. Such generality of objection is really an attack on the political expediency of the Hatch Act, not the presentation of legal issues. It is beyond the com-

petence of courts to render such a decision. *Texas v. Interstate Commerce Commission*, 258 U. S. 158, 162.

"The power of courts, and ultimately of this court, to pass upon the constitutionality of acts of Congress arises only when the interests of litigants require the use of this judicial authority for their protection against actual interference. A hypothetical threat is not enough. We can only speculate as to the kinds of political activity the appellants desire to engage in or as to the contents of their proposed public statements or the circumstances of their publication. It would not accord with judicial responsibility to adjudge, in a matter involving constitutionality, between the freedom of the individual and the requirements of public order except when definite rights appear upon the one side and definite prejudicial interferences upon the other."

Thus, the Court in *Hanson* did not and could not decide whether the Constitution would be offended if political exactions should be required, because the record did not, and in the nature of things could not, present the question whether the Act in fact, as administered and applied to those plaintiffs in the past, was constitutional. See to the same effect *United States v. Raines*, 28 L. Week 4147, 4148 (U. S. Feb. 29, 1960; No. 64).

Yet the Court, from even the meager materials described above, recognized the great significance of the potential constitutional infringement and that is *exactly* the reason, we believe, that it passed only upon the questions *specifically* raised, with adequate evidentiary support in *Hanson*, and *reserved* decision on the problems relating to the infringement of personal liberties to a subsequent case having positive evidence of record on the point. We believe the record in the instant case is what this Court was waiting for, and we will point out in other sections of this brief how the appellant unions use moneys exacted under the union shop agreement "to impair freedom of expression" and "as a cover for forcing ideological conformity" and "other action in contravention of the First Amendment."

B. The Political and Ideological Activities of the Unions Are Not "Germane to Collective Bargaining".

Appellants devote pages 56-62 of their brief to an attempted showing that their political and legislative activities are "germane to collective bargaining." Appellants, in that portion of their brief, actually assume the conclusion they would like to have this Court reach on the merits.

The reason appellants attempt to strain the expression "germane to collective bargaining" to fit their far-reaching political and ideological activities is that they are, in this renewed guise, still attempting to convince this Court that the *Hanson* decision approved such activities. In *Hanson* this Court said that if the unions were to assess charges "for purposes not germane to collective bargaining" a "different problem" would be presented. Yet, as will be seen from the appellants' brief and from ensuing discussion, if all of the activities of appellants are in fact "germane to collective bargaining"—even though they relate to international politics and countless items for which, obviously, the union does not and could not bargain with the employer—then this Court's promise to consider the "different problem" when it arose becomes meaningless.

We believe that "germane to collective bargaining," as used by the Court, means directly relevant to and in aid of the bargaining between employees and employer as contemplated by the Railway Labor Act. In appellants' view, the Court's phrase means nothing.

Essentially, appellants are saying that, since the law vests in them authority to bargain with employers as to rates of pay, rules, and working conditions on behalf of all employees in the crafts or classes which they represent, they must also be vested with authority to decide for the same employees which candidates should be supported or opposed in elections and which legislative measures should be favored or resisted. Whether Congress can constitutionally authorize them not only to bargain as to rates of

pay, rules, and working conditions but also to compel willing members to support their political, propagandist and legislative programs is the basic issue of this action.

Appellants' analysis expressly acknowledges that the interests of the working man in improvement of his lot can be pursued in at least two ways—the processes of collective bargaining, on the one hand, and the political and legislative processes, on the other. Indeed they have admitted (their brief, p. 53) that “the efforts of the railroad labor organizations . . . have on some subjects been directed as much if *not more* to legislative and political methods of achieving their goals as to conventional ‘collective bargaining’” (italics added). Appellants have sought to obscure the fact that these two lines of action are very different and are separated by a wide gulf.

That gulf is bridged by appellants' assumption that their designations as statutory collective bargaining agents constitutionally included also a designation to serve as the political and legislative agents of all employees whom they represent. But there is no warrant for this assumption, for, while this Court held in *Hanson* that employers can be compelled not only to accept a union's representation when selected by a majority of employees but also to support the activities of the union “in the realm of collective bargaining,” it has never held that employers can, consistently with the Bill of Rights, be forced to accept and give financial support to, a union as their statutory political and legislative agent.

To say that political activity is “germane to collective bargaining” simply because it represents a *different method* of achieving the same ends in certain limited areas is analogous to saying that inheriting and earning are “germane” to each other because they are different means of acquiring money. The fact is that one does not aid or relate to the other. They are completely dissimilar methods of accomplishing an objective. Certainly this Court in the *Hanson* decision did not mean that, because the union has statutory designation to negotiate *with the employer*

for *contractual* benefits, they also have a roving commission to seek similar or different benefits by any means and from any source they might choose.

The record in this case shows clearly that the political and ideological use of funds forcibly extracted from the individual appellees is not "germane" to collective bargaining.

The primary inquiry at this point is "What is collective bargaining?"

In the National Labor Relations Act, "collective bargaining" is defined as "the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, for any question arising thereunder, and the execution of a written contract incorporating any agreement reached . . ." National Labor Relations Act, as amended, Section 8(d); 29 U. S. C. § 158(d). Although collective bargaining is not so defined as a term of art in the Railway Labor Act, it is clear that "collective bargaining" under that Act has the same content and significance. Thus, the general purposes of the Railway Labor Act are stated to be (45 U. S. C. § 151(a)):

"(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."

Items (4) and (5) express what might be termed the collective bargaining aspects of the Railway Labor Act.

The fact that collective bargaining has to do with relations between the employees and the employer is dependent in Section 2, Third and Fourth of the Railway Labor Act providing for the independence of the employees' collective bargaining representatives.

In supporting the proposed 1934 Amendments to the Railway Labor Act, Representative Crosser, who testified before the Committee on Rules of the House of Representatives (H. Doc. 5503, A4, 1934, p. 14):

"These men [railroad employees] ought to have the free right to organize voluntarily, without interference of any kind of organization they want. There should be no any fake organization created for them, by means of the money and the pressure of the employer, and there is going to be anything left in this matter of collective bargaining, so-called.

"I can understand how men who hold to the old-fashioned doctrine of laissez faire object to this. They do not believe in collective bargaining at all, but they do say, as they did when they appeared before the committee, it may be it is necessary, proper and advisable from the standpoint of future peace and prosperity that we do have collective bargaining to settle disputes and grievances, that we do have a properly organized union; and surely no fair-minded man, no man free from hypocrisy, would undertake to claim that the employer has the right to name the representatives of the employees' side to carry on negotiations."

Commissioner J. B. Eastman, testifying in support of the same proposals, said (Hearings before the Committee on Interstate and Foreign Commerce, H. Doc. 5503, A4, p. 22):

"Now, coming to section 2, I want to begin by pointing out that the two parties which engage in collective bargaining shall be truly representative of the

which they purport to represent and wholly independent of each other."

In *J. I. Case Co. v. National Labor Relations Board*, 321 U. S. 332, 334-335 (1944), this Court stated:

"Collective bargaining between employer and the representatives of a unit, usually a union, results in an accord as to terms which will govern hiring and work and pay in that unit . . . The negotiations between union and management result in what often has been called a trade agreement, rather than in a contract of employment."

The Court stated that majority rule "collectivizes the employment bargain," subsequently referred to as "the collective bargain" (321 U. S. 339). That this amounts to what has been depicted above—i.e. negotiations and other handling of employee's problems and demands with management by a representative of the employees—is made clear by Section 2, Ninth of the Railway Labor Act (45 U. S. C. § 152, Ninth) which imposes upon the carrier the obligation to "treat" with the representatives of its employees certified by the National Mediation Board. In *Virginian Ry. v. System Federation No. 40*, 300 U. S. 515 (1937), the Court said (300 U. S. 553):

"The Railway Labor Act, § 2 (45 U. S. C. A. § 151a) declares that its purposes, among others, are 'to avoid any interruption to commerce or to the operation of any carrier engaged therein,' and 'to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions.' The provisions of the act and its history, to which reference has been made, establish that such are its purposes, and that the latter is in aid of the former. What has been said indicates clearly that its provisions are aimed at the settlement of industrial disputes by the promotion of collective bargaining between employers and the authorized representative of their employees, and by mediation and arbitration when such bargaining does not result in agreement."

It is clear, at least, that the political and legislative activities of the appellants are not themselves "collective bargaining". Let us now examine appellants' claim that their political activities are "germane" to collective bargaining.

So far as their political activities are concerned the appellants have clearly stipulated (R. 191):

"The political activities mentioned in this Stipulation of Facts do not involve and are unnecessary to the negotiation, maintenance and administration of agreements concerning rates of pay, rules and working conditions, or wages, hours, terms and other conditions of employment, or the handling of disputes relating to the above."

These political activities are not of a minor nature, and they can be ignored as *de minimis* or merely incidental to incidents of collective bargaining activities. Appellants have stipulated (R. 188):

"The money which has been, is being, and is to be paid by plaintiffs, intervening plaintiffs and intervenors, they represent as dues, fees, and assessments for political purposes is being and will be used in substantial part to support the campaigns of candidates for the offices of President, Vice President, U. S. Senators and Congressmen and their committees, as described elsewhere in this Stipulation of Facts, for direct contributions to candidates for various State and local offices, as described elsewhere in this Stipulation of Facts."

They also stipulate (R. 187-188):

"The funds expended by the labor union defendants for political activities as set forth in this Stipulation of Facts are substantial, and the proper and proper amounts of the periodic dues, fees, and assessments which are being paid, or which will be required to be paid, by the plaintiffs and intervening plaintiffs, and the class they represent are also substantial, and the amounts of such dues which are and will be used primarily for political purposes are also substantial."

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The record in this case contains many specimens of appellants' political activities, revealing that they are in aid of collective bargaining, but represent simply massive engagement in national politics, an attempt to become a dominant factor in one political party.

The standard practice of appellants, and the various labor organizations with which they are affiliated, is to urge support of candidates on the basis of their past voting records on selected issues on which they are scored as voting "right" or "wrong". See COPE's Score Sheet for the U. S. Congress for 1947-1956 (Tr. 415); MNL's Score Sheet for 1955-1957 (Tr. 377-378). In COPE's Score Sheet the issues upon which the Senators and Representatives are rated are described as follows:

"It should be noted that the votes are arranged in four groups: (1) Labor Legislation, (2) General Welfare Legislation, (3) Domestic Policy, and (4) Foreign Aid. Thus AFL-CIO members and the public at large are assured that the AFL-CIO does not judge Congressmen on selfish narrow lines but with the broad public interest in mind."

The same types of issues are used by the other labor groups.

By what right does a labor organization use money collected under the approval of the federal government from an employee under a union shop agreement ostensibly for collective bargaining purposes, to promote candidates because of their voting record on general welfare legislation, or on domestic policy issues, or on foreign aid? What relevance is it to collective bargaining that a candidate is either for or against foreign aid, or that he believes that states rather than the federal government should control off-shore oil, or that he favors 90% parity for farm price supports? Clearly, there is no relationship whatever.

Clearly also there are senators and representatives "friendly" to labor in both political parties, yet the

pellants and the organizations affiliated with them constantly give blanket support to one party as against the others (see pp. 12a-21a of Appendix to this brief; R. 35-36; R. 196, pars. 66-67; R. 300, R. 307, R. 310).

Appellants argue that "effective political action requires expansion beyond mere bread and butter issues to attain wider political support to help elect officials" (brief, p. 61). The logical application of this principle requires a base of issues as broad as the subject itself. Its result has been the regular and virtual support of one political party to the virtual exclusion of the others. That, we contend, is far beyond the scope of collective bargaining. A labor party (in defendant's name) cannot be created through funds exacted from a union shop agreement.

The same principles apply to appellants' political (and electoral) activities and to their legislative activities. Their legislative activities have as their objectives the passage or defeat of legislation having no relevance to collective bargaining. See Plaintiffs' Exhibit 7 (Tr. 393), R. 179.

In line with their political and legislative activities, appellants' "political education" engaged in by appellants and their affiliated organizations has no relation to collective bargaining. It consists of an attempt to indoctrinate appellants and others with the appellants' particular orthodoxy. It is support for such things as public power, foreign aid, etc. Consequently, it is clear that these activities can properly be considered as "general" rather than "collective bargaining," for which subject matter appellants are authorized by statute to represent the appellees and the class represented by them and to receive financial contributions from them.

When one considers that, under the Railway Labor Act, a collective bargaining representative "may elect one or more persons, or a labor union or organization, to represent it" (*Years Under the Railway Labor Act, American Railway Union v. National Mediation Board, 1934-1949* (1950)),

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No one would seriously contend that an individual
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In *Hanson* this Court held that Congress is emp
by the Constitution to compel a railroad employe
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But Congress has no power to re-order the Nation
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an unwanted representative for the exercise of his
rights.

II.

**The union shop contract, by forcing minority
employees to accept and pay for political represen-
tation by their political foes, violates the First, Fifth
and Tenth Amendments to the Federal Constitution.**

We shall demonstrate hereinafter that consti-
tutional rights are violated by use of the union shop con-
tract which forces minority employees to associate themselves with
and support financially, the propagation of political views
which they in fact oppose, and that "ideological conformity"
is thereby imposed.

In order for the union shop contract of the appellant unions thereunder to consist of constitutional rights, such contract and a finding shall first demonstrate that governmental action.

A. The Union Shop Contract and the Activities Thereunder Represent Governmental Action in Violation of Constitutional Rights of Minority Employees

The unions argue (pp. 21-25 of their brief) with simplicity that when Congress in 1951 repealed the Railway Labor Act prohibition of the union shop, it substituted imposition of compulsory union membership and restored the common law right of the employee to leave the employee for any or no reason and did not require affirmative federal governmental action in violation of employment rights of minority employees.

That argument represents a stubborn refusal of the unions to recognize the real issue in this case. Can Congress first require *minority* employees to elect for *collective bargaining* an agent selected and controlled by the majority, and then later expand the powers of the agent—again over the protest of the minority—force the minority not only to pay union dues but also to *associate themselves* with the *beliefs of the majority* which differ from the beliefs of the minority?

More narrowly defined, the question is whether Congress can require the minority of the employees to accept the dictation of the majority with respect to political subjects, rates of pay, rules and working conditions. Can Congress require the minority to pay the union to act on all political subjects even though the union may hold the reverse of the views of the minority employees?

Can Congress thus require the minority to accept and pay for political representation which

and the activities constitute a violation and activities must be on. Therefore, we action is involved.

Activities of the Union Action Affecting the Employees.

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whether Congress yees to accept the politics as well as tions, and further et as spokesman on n speaks the exact oyees on such sub-

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want and which grossly misrepresents their views stated, that is the issue in this case.

So stated, the question seems rhetorical and the obvious. Surely Congress could not thus authorize political domination of any minority, requiring the to contribute the funds to finance its own sub. Surely Congress itself could not tax the minority in order to propagate and magnify the expression with which they disagree. How, then, could Congress authorize a union to do the same thing? Yet it is per- vious that, without the authority of Congress, t could not thus tax the minority employees for poli- poses, and that therefore if the unions have the extract funds from the minority for such purp- right derives from Congress through the 1951 an- of the Railway Labor Act.

The contention of the unions that federal gov- action is not involved is contrary to the conclusi- Court in the *Hanson* case, when the Court was c- forced contribution for *collective bargaining only* reference to the *a fortiori* situation where, as l- tributions for political and ideological purposes ar- pursuant to the union shop contract. The Co- said (354 U. S. at 231-232):

"The union shop provision of the Railway L is only permissive. Congress has not comp- required carriers and employees to enter i- shop agreements. The Supreme Court of- nevertheless took the view that justiciable under the First and Fifth Amendments were since Congress, by the union shop provision of way Labor Act, sought to strike down inconsi- in 17 States. Cf. *Hudson v. Atlantic Coast Li* 242 N. C. 650, 89 S. E. 2d 441; *Otten v. Balti* R. Co., 2 Cir., 205 F. 2d 58. The Supreme Nebraska said, 'Such action on the part of is a necessary part of every union shop cor- tered into on the railroads as far as these are concerned for without it such contracts

be enforced therein.' 160 Neb. at 698, 71 N. W. 2d at 547. We agree with that view. If private rights are being invaded, it is by force of an agreement made pursuant to federal law which expressly declares that state law is superseded. Cf. *Smith v. Allwright*, 321 U. S. 649, 663. In other words, the federal statute is the source of the power and authority by which any private rights are lost or sacrificed. Cf. *Steele v. Louisville & N. R. Co.*, 323 U. S. 192, 198-199, 204; *Public Utilities Commission of District of Columbia v. Pollak*, 343 U. S. 451, 462. The enactment of the federal statute authorizing union shop agreements is the governmental action on which the Constitution operates, though it takes a private agreement to invoke the federal sanction.

"As already noted, the 1951 amendment, permitting the negotiation of union shop agreements, expressly allows those agreements notwithstanding any law 'of any State.' § 2, Eleventh. A union agreement made pursuant to the Railway Labor Act has, therefore, the imprimatur of the federal law upon it and, by force of the Supremacy Clause of Article VI of the Constitution, could not be made illegal nor vitiated by any provision of the laws of a State."

The author of this opinion elaborated its meaning two weeks later in *Black v. Cutter Laboratories*, 351 U. S. 292, 302 and footnote (1956). There Mr. Justice Douglas states that an employer independently could discriminate against Republicans and hire only Democrats if he chose, but that "A union has no such liberty if it operates with the sanction of the State or Federal Government behind it. It is then the agency by which governmental policy is expressed and may not make discriminations that the Government may not make", citing the *Hanson* case, among others.

The meaning of the Court's decision in the *Hanson* case is further emphasized by the decision in *Teamsters Union v. Oliver*, 358 U. S. 283, 296-297 (1959), where the Court, through Mr. Justice Brennan, stated:

"Of course, the paramount force of the federal law remains even though it is expressed in the details of a

contract federal law empowers the parties to make, rather than in terms in an enactment of Congress. See *Railway Employees' Dept. v. Hanson*, 351 U. S. 225, 232."

The unions suggest that the Court's conclusion should be different where, as in Georgia, the "right to work" statute does not apply to railroads subject to the Railway Labor Act. However, that argument overlooks the facts: (1) that the Court's reasoning in the *Hanson* case does not depend on the accident of actual supersession of state law by the Railway Labor Act in order to find federal governmental action in the union shop requirements; (2) that the Georgia courts have ruled quite explicitly in this case that the union shop requirements here involved are invalid under Georgia law unless the Railway Labor Act constitutionally takes priority over Georgia law; and (3) that this case involves employees in states other than Georgia where right to work statutes apply to the entire railroad industry, and therefore supersession of state law is necessary in order to make a union shop contract effective systemwide.

From the language of this Court's decision in the *Hanson* case, as quoted above, together with the authorities cited by the Court, it seems clear that the Court had the following factors in mind when it concluded that the union shop represented governmental action:

1. *The Union Shop Contract Depends on the Supremacy of Federal Legislation for Its Existence.*

The validity of the union shop contract here in issue must stand or fall under federal law. It would be senseless to suppose that Congressional power could be made to depend upon state consent, so that Section 2, Eleventh would be unconstitutional in states having right-to-work laws to be superseded, but constitutional in states where state law would tolerate such political exaction under a union-shop arrangement. An act of Congress is not the less federal action because state law happens at the moment to coincide.

It is still federal authority that dominates (*Textile Workers Union v. Lincoln Mills*, 353 U. S. 448 (1957)), and the Bill of Rights may not be evaded by such sophistry. It may be noted that the Taft-Hartley law leaves the question of the union shop to state decision. § 14 (m), 61 Stat. 151, 29 U. S. C. § 164 (b).

Moreover, the union shop requirements here involved are unlawful in Georgia and in other states which have applicable right to work statutes, unless the Federal Union Shop Amendment supersedes the laws of such states.

The trial court below held (R. 104):

"Said exaction and use of money and said union shop agreements and their enforcement are contrary to the Constitution, the law and public policy of this State ..."

To that finding appellants excepted (R. 234) and the Supreme Court sustained the trial court (215 Ga. 42-47; R. 265-270). That decision was one involving an interpretation of Georgia law, and well within the competence of the Supreme Court of Georgia. This Court invariably defers to the highest state tribunal in questions of interpretation of state law. *Oklahoma Tax Comm'n v. Texas Co.*, 336 U. S. 342 (1949); *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U. S. 673 (1930); *Williams v. Kaiser*, 323 U. S. 471 (1945); *Madden v. Kentucky*, 309 U. S. 83 (1940).

The trial court found also that "Said exaction and use of money and said union shop agreements and their enforcement are contrary . . . to the statutes or laws of other states in which the defendant railroads operate" (R. 104). Among the other states in which the Southern Railway System operates, and which have right-to-work laws with no exceptions for the railroad industry, is North Carolina (R. 198; see Appendix to this brief, p. 57a, n. 1). In *Allen v. Southern Railway*, 249 N. C. 491, 107 S. E. 2d 125 (1959), petition for rehearing granted, now pending on reconsideration, the North Carolina Supreme Court specifically held

"Absent the Union Shop Amendment the union shop agreement would be void under the North Carolina Right to Work Act. Session Laws of 1947, Ch. 328, G. S. § 95-78 *et seq.*"

The action of the Union Shop Amendment in accomplishing nullification of that and other state statutes was federal governmental action.

2. Apart from the Union Shop Amendment, the Appellants' Powers Derive from Government and Are Subject to Constitutional Limitations.

If Congress had not specifically authorized the union shop agreement, the power exerted by the unions upon the members of the class represented would still be confined by the guarantees of the federal Constitution. Under the Railway Labor Act, the union is born, lives, and acts under federal authority; this authority cannot transcend the constitutional boundaries.

(a) The power to bind minority members of the class is conferred by federal law.

The only authority of the unions to represent the individual appellees comes from the Railway Labor Act. As the Court said in *Steele v. Louisville & N. R. R.*, 323 U. S. 192, 199 (1944):

"Since petitioner and the other Negro members of the craft are not members of the Brotherhood or eligible for membership, the authority to act for them is derived not from their action or consent but wholly from the command of the Act."

Even more pertinent is the following language (323 U. S. at 200):

"Section 2, Second, requiring carriers to bargain with the representative so chosen, operates to exclude any other from representing a craft. *Virginian R. Co. v. System Federation*, supra, 300 U. S. 545, 57 S. Ct. 598, 81 L. Ed. 789. The minority members of a craft are

thus deprived by the statute of the right, which they would otherwise possess, to choose a representative of their own, and its members cannot bargain individually on behalf of themselves as to matters which are properly the subject of collective bargaining. Order of Railroad Telegraphers v. Railway Express Agency, 321 U. S. 342, 64 S. Ct. 582, and see under the provisions of the National Labor Relations Act *J. Case Co. v. National Labor Relations Board*, 321 U. S. 332, 64 S. Ct. 576, and *Medo Photo Supply Co. v. National Labor Relations Board*, 321 U. S. 678, 68 S. Ct. 830."

Thus the Act has taken away from the individual appellants the right which they previously had to represent themselves and has given to the union designated by the majority of employees complete power to negotiate rates of pay, rules and working conditions for the minority. This power is likened by the Court (323 U. S. at 202) to powers "possessed by a legislative body both to create and restrict the rights of those whom it represents." As the Court further said (323 U. S. at 204), a "right asserted, which is derived from the duty imposed by the statute on the bargaining representative, is a federal right implied from the statute and the policy which it has adopted."

In the concurring opinion of Mr. Justice Murphy, the legal situation is thus described (323 U. S. at 208):

"The constitutional problem inherent in this instance is clear. Congress, through the Railway Labor Act, has conferred upon the union selected by a majority of a craft or class of railway workers the power to represent the entire craft or class in all collective bargaining matters. While such a union is essentially a private organization, its power to represent and bind all members of a class or craft is derived solely from Congress."

The essence of governmental power, indeed the definition of government, is the capacity to bind a dissenting minority.

ity. In the exercise of that power, the labor representative must observe the Constitution.

The necessary principle that every contract made by the railway labor representative through the power of the federal government must be measured against the Constitution has been repeatedly declared and applied by this Court. See, e.g., *Brotherhood of Railroad Trainmen v. Howard*, 343 U. S. 768, 773-774 (1952); *Tunstall v. Brotherhood of Locomotive Firemen*, 323 U. S. 210 (1944). Whenever the "authority derives in part from Government's thumb on the scales," *American Communications Association v. Douds*, 339 U. S. 382, 401 (1951), the commands of the Constitution are called into play.

(b) The organization and designation of the labor representative result from federal action.

The labor representative under the Act is a creature of that law. In its origin, the labor organization is fostered by governmental establishment of a legally enforceable right of employees to join together for collective bargaining purposes. Section 2, Fourth. The carrier is forbidden by law to interfere in this process of organization. Section 2, Third, Fourth, Fifth and Tenth.

Once organized, the union is again the recipient of federal sanction in the form of election and certification as the exclusive bargaining agent. The election procedure is protected and regulated in detail. Section 2, Third and Fourth. Section 2, Eighth further reinforces the protections surrounding the election procedure, and Section 2, Tenth provides criminal penalties enforcing the provisions for unimpeded selection of the collective bargaining agent.

Section 2, Ninth turns over to the National Mediation Board complete control of the elective procedure, giving that federal agency power to "investigate" and "certify", to "take a secret ballot" or "to utilize any other appropriate method" of electing the bargaining agent, and to "designate who may participate in the election and estab-

lish the rules to govern the election." Certainly no complete control of elective procedure is held by an governmental body, federal or state. Indeed, this Court held that the Mediation Board's control of election even beyond the reach of judicial review (*Switchboard Union v. National Mediation Board*, 320 U. S. 297 (1943))—a degree of absolutism which is unequalled in any electoral process.

Where government has assumed far less control over election procedure, this Court has held that the government "endorses, adopts and enforces" unconstitutional sequences of the process. Thus, in *Smith v. Allwright*, 321 U. S. 649, 663 (1944), the Court said in discussing a primary election conducted by an ostensibly "political party": "The party takes its character as an agency from the duties imposed upon it by state statute. The duties do not become matters of private law because they are performed by a political party." The Court concluded (321 U. S. at 664):

"If the state requires a certain electoral procedure, it prescribes a general election ballot made up of nominees so chosen and limits the choice of the electorate in general elections for state offices, practically speaking, to those whose names appear on such a ballot. It endorses, adopts and enforces the discriminatory practice against Negroes, practiced by a party entrusted with the Texas law with the determination of the qualifications of participants in the primary. This is state action within the meaning of the Fifteenth Amendment."

Certainly, the much more complete and absolute control which Congress has asserted over the selection of a collective bargaining agent under the Railway Labor Act constitutes federal action within the meaning of the Fourteenth and Fifth Amendments to the Constitution, and the government thereby "endorses, adopts and enforces" discriminatory or other unconstitutional actions which result from the electoral procedure. It would appear

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the Court's decision in *Terry v. Adams*, 345 U. S. 461 (1953), that even if the federal controls over the election of the "legislative body"—the collective bargaining agent—were removed, discriminatory conduct by the agent would still constitute governmental action since the right and duty of the agent to represent the employees is conferred by federal statute and the government must correlatively protect the employees against either improper activities in selection of the agent (*Smith v. Allwright* and *Terry v. Adams*) or unconstitutional deprivation of rights resulting from negotiations by the agent (*Steele v. Louisville & N. R.R.*). See to this general effect *Derrington v. Plummer*, 240 F. 2d 922 (5th Cir. 1956), where it was held that a private cafeteria operator's action in discriminating on grounds of race in premises leased from the county constituted "governmental action". Cf. *Muir v. Louisville Park Theatrical Ass'n*, 347 U. S. 971 (1954), *reversing per curiam*, 202 F. 2d 275 (6th Cir. 1954).

(c) The labor representative is created to perform a governmental function and serve as the instrument of federal policy.

It may be suggested by the unions that the principle of *Smith v. Allwright* and *Terry v. Adams* applies only to situations where the ostensibly "private" organization (political party or collective bargaining agent) is an instrument for achieving some governmental policy or objective, such as the election of public officials. The rule of those cases would seem to be applicable to this case regardless of the presence or absence of a governmental objective, since the government has interjected itself to change and control the bargaining relationships between employer and employee and has assumed the regulation of such relationships and the bargaining itself in great detail, not only through statutory and administrative rules and actions, but also through implied statutory requirements announced through the federal courts (see, for example, *Steele v. Louisville & N. R.R.*, *supra*).

But if the effectuation of a governmental policy is essential for discovery of governmental action in enforcement of union shop requirements, it should be sufficient to note that in the *Hanson* case this Court said Congress chose "the union shop as a stabilizing factor" and that "Congress might well believe that it would insure the right to work in and along the arteries of interstate commerce". Thus it is clear that Congress has adopted the union shop amendment to the Railway Labor Act as a means of regulating interstate commerce. Surely the federal government cannot disclaim responsibility for the consequences of the union shop where parties to collective bargaining have entered into the very type of contract which Congress felt would be a "stabilizing factor" and particularly where, as will be more fully shown, the parties were greatly influenced by federal government agencies in negotiating such a contract.

The appellants' current position (their brief, paragraph 10, that § 2, Eleventh merely repealed the former provision of the union shop cannot be squared with their position before the governmental agency that entered into negotiation of this agreement. At the hearing before Engineering Board No. 98 regarding the union shop demand of non-operating railroad unions, on November 11, 1940, appellants' counsel, Mr. Schoene, said in his opening statement:

"... Further, as evidence we will produce and show you, when Congress was giving consideration to this matter it was fully aware that the inevitable result of the enactment of this legislation would be the creation of union shop and check-off agreements generally throughout the carriers throughout the country. The amendment to the legislation was sponsored by the railway labor unions. They made it perfectly clear in their introduction of that legislation that they were not simply making some abstract revision of the law, but it was their intent and purpose when the law was amended to immediately seek and procure union shop agreements with the carriers throughout the country. The carriers likewise were fully aware of that consequence."

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"We will show you in the evidence that the carriers stated—a spokesman for the carriers repeatedly stated to the Congress that if Congress were going to enact such a bill they might as well make it mandatory because the result of enacting the bill would inevitably be the execution of union shop and check-off agreements.

"Now, of course, Congress could not make it mandatory. It is a contradiction in terms to speak of union shops or check-off agreements as being mandatory. But Congress, after having heard the carriers say, and not having heard the organizations deny, that the inevitable consequence of adopting the bill would be the execution of the union shop and check-off agreements throughout the country, proceeded to enact the bill, clearly contemplating exactly the result that had been forecast by the carriers when opposing the bill.

"Now, with that clear expression of national policy on the part of the highest policy-making body in this country, we do not feel that this Board should presume to review as a matter of principle the policy determination made by the Congress of the United States. . . ."

(d) In negotiating and bargaining, the union exerts governmental power.

The Railway Labor Act does not stop with the imposition of an unwanted agency upon the employee as a matter of law. It goes further to make that agency exclusive. The employee is forbidden to bargain for himself. Moreover, the carrier is prohibited from dealing with any other person or representative, and even from taking unilateral action in the domain staked out for bargaining. Section 2, Seventh and Eighth; Section 6. Further, the law visits upon the employer not merely a negative duty not to negotiate with others; it enjoins an affirmative duty "to exert every reasonable effort to make and maintain agreements . . . and to settle all disputes . . ." (Section 2, First see *Switchmen's Union v. National Mediation Board*, 320 U. S. 297, 304 (1943)). And the law subjects the carrier

to a specific obligation to confer with the labor representative. Section 2, Second and Sixth. As a party in interstate commerce, the common carrier is subject to extensive regulation, and the Railway Labor Act offers the additional sanction of criminal penalties for breach of certain of these duties running through the organization. Section 2, Tenth. In the process of negotiation, therefore, the federally-approved and authorized representative is not simply a private association but a representative to all the economic forces and bargaining techniques that operate in the field of private contracts. By the action of the federal government, it is elevated to a preferred status. When governmental power enters into the negotiation of a government contract, an employee may be discharged by a private employer only in accordance with the constitutional guarantees erected against government. *Greene v. McElroy*, 360 U. S. 474 (1959).

(c) Governmental power was directly exerted in the negotiation of the union shop contract.

Here, the federal government has done far more than regulate the selection of the "legislative body" or the labor representative bargaining agent. It has regulated and directed to a substantial degree the "legislation itself"—i.e., the negotiation of the union shop contract. Section 2, Second and Sixth. The Act prohibits any contract change "except in accordance with the procedure prescribed in such agreements or in section 6 of this Act." Section 6 specifies the procedure by which contract changes are to be negotiated. Section 5 provides for governmental intervention in the negotiations, and a Mediation Board is required to "put itself in communication with the parties" to a dispute over contract changes "and shall use its best efforts, by mediation, to bring about an agreement." The Mediation Board did in fact participate, by mediation, in the negotiations leading to the new union shop contract (R. 43).

When agreement was not reached in the mediation, and arbitration was rejected by the parties, the

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ment of an Emergency Board was recommended by the Mediation Board, and the President of the United States appointed such a Board pursuant to the procedure specified by Congress in Section 10 of the Act. After hearing the Emergency Board recommended that the parties enter a union shop contract (R. 43-44), and it was on the basis of that recommendation that the union shop contract was signed.

There can be no doubt that the Emergency Board was an agency of the federal government, being appointed by the President, upon the recommendation of the Mediation Board, and pursuant to procedure established by Congress. It is further clear that the recommendation of the Emergency Board was, and was intended by Congress, the President and the Mediation Board to be, highly influential in determining the course of the negotiations and in bringing about an agreement. The legislative history of the Railway Labor Act shows the purpose of Congress to have Emergency Boards consist of "outstanding representatives of the public" who would be able "to give the public adequate and intelligent information regarding the merits and contentions of the parties to crystallize public opinion in support of that party or that program which shows to be supported in the public interest." H. Rep. 328, 69th Cong., 1st Sess., p. 5 (1926). It was further stated that the purpose of an Emergency Board was "to express and mobilize public opinion to an extent impossible by a permanent board or agency of government which has heretofore been created for that purpose." *Id.* at p. 5.

The prestige and impartiality of Emergency Board was intended to be such that it would be difficult for the parties not to accept such recommendations. See Testimony of Donald R. Richberg, Hearings on S. 2306, U. S. Senate Committee on Interstate Commerce, 69th Cong., 1st Sess., pp. 18-19 (1926).

As Congressman Crosser explained it (67 Cong. Rec. 4665, 69th Cong., 1st Sess. (1926)):

"The bill provides for boards of adjustment of conciliation, an emergency board, and arbitration by which disputes are to be settled. The boards serve in a manner as courts to determine who is right and who is wrong, what is just and what is unjust, in disputes between railroads and their employees."

And in discussing the functions of the Emergency Board, Congressman Barkley said (67 Cong. Rec. 451, 1st Sess. (1926)):

"If they can not bring the parties together, it is made their duty to make a report upon the controversy, and by means of the publicity the power of public opinion is brought to bear upon the side which is recalcitrant or blameworthy. It might be a public calamity."

In its 22nd Annual Report for the fiscal year ending June 30, 1956 (p. 27), the National Mediation Board stated:

"The noncompulsion features of the act are applicable to reports of Presidential emergency boards. However, in keeping with the spirit and intent of the law it was contemplated that a report of the board would command the support of public opinion. It is *accepted by the disputants as a basis of negotiation and differences would be resolved*" (italics added).

Thus it is apparent that the federal government was directly involved at all stages of the proceeding. The government was the primary influence leading to the making of the contract.

In *Public Utilities Commission v. Pollak*, 343 U.S. 451 (1952), it was enough to invoke the constitutionality of the act that the Public Utilities Commission of the City of Columbia had ordered an investigation of the University of Missouri's "Music As You Ride" program, held that the program was unconstitutional and dismissed the proceeding. Here the direct appeal was to the Emergency Board, although not directly binding.

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(f) The union shop contract depends upon federal agencies for its enforcement.

Not only does the existence of the union shop con depend on governmental action, but it could not be en without administrative and judicial agencies of the fe government.

Under the Railway Labor Act all disputes over "i pretation or application of agreements concerning rat pay, rules, or working conditions . . . may be referre petition of the parties or by either party to the approp division of the Adjustment Board . . ." (Section 3, (i)). This Court has held that the quoted statutory guage creates "compulsory arbitration in this limited t inasmuch as "Congress has set up a tribunal to ha minor disputes which have not been resolved by the pa themselves. Awards of this Board are 'final and bin upon both parties.' And either side may submit the pute to the Board." *Brotherhood of Railroad Trainm Chicago River & Indiana R.R.*, 353 U. S. 30, 34, 39 (1

Any disputes concerning interpretation or applicati the union shop contract would therefore be referab the National Railroad Adjustment Board—the agency ated by Congress to settle such disputes—and the dec of the Adjustment Board would be final and bindin the parties. No state or federal tribunal would have j diction to interpret or enforce the contract prior to a r by the Adjustment Board. *Slocum v. Delaware L. & R.R.*, 339 U. S. 239 (1950); *Order of Railway Conduct Southern Ry.*, 339 U. S. 255 (1950).

If the decision of the Adjustment Board is not com with, Congress has specifically conferred jurisdictio federal district courts to enforce such decision (Secti First (p) of the Railway Labor Act).

Exclusive primary jurisdiction of disputes over interpretation of the union shop contract thus is vested in the Adjustment Board, and jurisdiction (possibly exclusive) to enforce the Adjustment Board decision is vested in the federal courts—both tribunals being creatures of the federal government.

It is true that the union shop contract provides (R. 210) for arbitration of one type of dispute—a dispute over discharge of an employee—but even in that single instance the National Mediation Board is called upon to appoint an arbitrator if the parties are unable to agree on one.

Where tribunals created by government are called upon to enforce actions of “private” persons or organizations, this Court has repeatedly held that the enforcement constitutes governmental action affecting constitutional rights. Thus, in *Shelley v. Kraemer*, 334 U. S. 1 (1948), the Court held that a state, by allowing its courts to enforce a restrictive covenant, was discriminating against prospective purchasers or users of property on the basis of race. And in *Barrows v. Jackson*, 346 U. S. 249 (1953), the Court extended the doctrine of *Shelley v. Kraemer* by holding that the use of a state court to award damages for breach of such a restrictive covenant constituted governmental action by the state to enforce restrictive covenants. In *Marsh v. Alabama*, 326 U. S. 501 (1946), the Court held that invoking a state criminal statute to enforce a demand made by a private corporation constituted governmental action supporting such demand.

This Court fully recognized the applicability of the principle of *Shelley v. Kraemer*, *Barrows v. Jackson* and *Marsh v. Alabama* in the *Hanson* case, where it stated (Footnote 4):

“Once courts enforce the agreement the sanction of government is, of course, put behind them. See *Shelley v. Kraemer*, 334 U. S. 1; *Hurd v. Hodge*, 334 U. S. 24; *Barrows v. Jackson*, 346 U. S. 249.”

Here the federal government has assumed exclusive and extraordinary jurisdiction of the enforcement of the union shop contract. This suffices to subject the contract to constitutional scrutiny.

From the foregoing, it is clear beyond doubt that the union shop contract—created under federal governmental auspices and enforceable only by federal governmental agencies—represents governmental action and that any impairment of constitutional rights arising out of such contract is a violation by the federal government of the Bill of Rights.

B. The Political Freedom of Individual Appellees and Their Freedoms of Speech, Press and Association Are Being Violated by Compulsory Attachment of Unconstitutional Conditions.

Several important rights or interests of the individual appellees are threatened in this case. The first is their political liberty, secured by the First, Fifth, Ninth and Tenth Amendments to the Constitution of the United States.

1. The Union Shop Contract Deprives the Individual Appellees of Their Political Freedom.

Political liberty was not left to chance by the framers of our Constitution, who were well aware of the meaning of and necessity for such liberty. They embodied its protection in the First, Fifth, Ninth and Tenth Amendments where it is intertwined with, and actually a part of, the fundamental liberties protected by due process of law and the freedoms of speech, press and association.

This Court has explicitly recognized that constitutional protection is accorded political liberty in the Bill of Rights. In *United Public Workers v. Mitchell*, 330 U. S. 75, 94-95 (1947), the Court ruled:

“We accept appellant’s contention that the nature of political rights reserved to the people by the Ninth and

Tenth Amendments are involved. The right claim as inviolate may be stated as the right of a citizen act as a party official or worker to further his political views. Thus we have a measure of interference by the Hatch Act and the Rules with what otherwise would be the freedom of the civil servant under the First, Ninth and Tenth Amendments. And, if we look upon due process as a guarantee of freedom in the fields, there is a corresponding impairment of the right under the Fifth Amendment."

In *American Communications Ass'n v. Douds*, 339 U. S. 382, 393 (1950), this Court carefully considered the constitutionality of the non-Communist affidavit provision of the National Labor Relations Act in "discouraging the exercise of political rights protected by the First Amendment," thus recognizing that even "discouragement" of political liberty must be tested under the Bill of Rights.

The high position occupied by political liberty is manifested by the fact that this Court has put it on the same plane as freedom of speech, freedom of religion, and freedom of the press. Speaking of the protections accorded witnesses before Congressional investigating committees by the Bill of Rights, the Court said in *Watkins v. United States*, 354 U. S. 178, 188 (1957):

"Nor can the First Amendment freedoms of speech, press, religion, or *political belief and association* abridged" (italics added).

On the same day as the *Watkins* decision, the Chief Justice, Mr. Justice Black, Mr. Justice Douglas and Mr. Justice Brennan, in *Sweezy v. New Hampshire*, 354 U. S. 234, 245 (1957), stressed the fact that "freedom of speech or press, freedom of political association, and freedom of communication of ideas" are "highly sensitive areas", and said. (354 U. S. at 250):

"Equally manifest as a fundamental principle of democratic society is political freedom of the in-

vidual. Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the media of political associations. Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents."

In the same case, Mr. Justice Frankfurter, joined by Mr. Justice Harlan, said (354 U.S. at 265):

"For a citizen to be made to forego even a part of so basic a liberty as his political autonomy, the subordinating interest of the State must be compelling . . . [T]he inviolability of privacy belonging to a citizen's political loyalties has so overwhelming an importance to the well-being of our kind of society that it cannot be constitutionally encroached upon on the basis of [a] meagre . . . countervailing interest of the State . . ."

The Court's further concern for "individual freedom" in association and political activity was expressed as follows in *National Association for Advancement of Colored People v. State of Alabama*, 357 U. S. 449, 460 (1958):

"Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly. *De Jonge v. Oregon*, 299 U. S. 353, 364, 57 S. Ct. 255, 259, 81 L. Ed. 278; *Thomas v. Collins*, 323 U. S. 516, 530, 65 S. Ct. 315, 322, 89 L. Ed. 430. It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech . . . Of course, it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters,

and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny."

In giving the "closest scrutiny" to possible inhibition of freedom of association, the Court has rejected the argument, renewed here by the unions, that the freedom may be curtailed by "private" action. Thus, the Court went on to say (357 U. S. at 463):

"It is not sufficient to answer, as the State does here, that whatever repressive effect compulsory disclosure of names of petitioner's members may have upon participation by Alabama citizens in petitioner's activities follows not from *state* action but from *private* community pressures. The crucial factor is the interplay of governmental and private action, for it is only at the initial exertion of state power represented by the production order that private action takes hold."

Here, also, the curtailment of freedom of association and freedom not to associate results from an "interplay of governmental and private action", and the governmental action is, as demonstrated above, decisive, for without it the minority employees could not and would not be forced into association with the ideas and activities of the union in the political field. See to the same effect the recent decision of this Court in *Bates v. City of Little Rock*, 379 U. S. 415, 60 L. Week 4102 (U. S. Feb. 23, 1960, No. 41).

Appellants rely heavily (brief, 43-44) on *DeMille v. American Federation of Radio Artists*, 175 P. 2d 139, 31 Cal. 2d 139, 187 P. 2d 769 (1947), *cert. den.*, 333 U. S. 876 (1948). That decision is inapposite. No contention was made there that *government* required DeMille to surrender his political rights to retain his job. Here, government is the decisive factor in depriving individual appellees of their political freedom.

In view of the Stipulation of Fact that appellants' political activities are not necessary to their collection

bargaining activities (R. 191), it is an indisputable violation of appellees' First Amendment rights (and beyond the furthest reaches of Congress' Commerce power) for appellees to be required to submit to political and legislative representation by appellants.

Of course, appellees retain the right to politicize on their own. But their participation through their union representatives negatives and destroys the effectiveness of their individual participation. It is worse than being merely "paired" off against themselves. Their self-appointed "spokesman"—the union—speaks so loudly that their individual voices cannot be heard. In this clearest possible violation of their freedom of association, the individuals are so thoroughly submerged by the mass which they are compelled to finance that their individual identities and views cannot be recognized.

The question therefore resolves itself into whether the "collective" political representation which the appellants impose upon appellees under the union shop agreement is constitutional. Clearly it is not. It is a flagrant infringement of appellees' freedom of association—as well as of their political rights.

In *Pappas v. Stacey*, 151 Me. 36, 116 A. 2d 497, 500, appeal dismissed, *Stacey v. Pappas*, 350 U. S. 870 (1955), the Supreme Judicial Court of Maine said:

"Freedom to associate of necessity means as well freedom not to associate."

See also:

Thomas v. Collins, 323 U. S. 516 (1945);
National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1, 33, 34 (1937).

The individual appellees have urged that the requirement that they contribute money to be used by others to promote political programs and candidates which they oppose dilutes their right to the free exercise of their elective franchise. Obviously, their financial ability to

support political programs and candidates who favor is impaired to the extent they are forced to support programs and candidates opposed by them. And it is as clear that this is a right which is protected by the Constitution.

United Public Workers v. Mitchell, *supra*
The Citizens' Savings & Loan Assoc. of C
Ohio v. Topeka City, 20 Wall. 635 (1875)

The amount of the exaction is not relevant. As said in his "Memorial and Remonstrance Against Assessments", "... the same authority which requires a citizen to contribute 3 pence only of his property to the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever." I Stokes, *Church and State in the United States* (Harper, 1950) p. 391.

Political liberty was the genesis of the American Revolution. Nothing could be more fundamental. Without other rights guaranteed by our Constitution are threatened by a most tenuous thread.

In the proposed brief submitted here as "Amicus Curiae" by the AFL-CIO it is argued (pp. 8-9):

"What precise use a union subsequently makes of its funds is not determined by the terms of a shop contract whereby employee payments are deducted. That is a matter for determination by the majority of the union membership or by duly elected officials acting under the union's governing rules. A determination is thus wholly a matter of private action, with no state action involved."

"The right or power of a union to make expenditures is neither derived from nor regulated by any statute or other governmental authority. The appellants here do not rely on federal law authorizing union political activities or expenditures because there is no such law. They rely on the right of a private organization to run its own affairs."

in the best interests of its membership, absent any properly applicable governmental controls" (italics added).

This proposition, so boldly stated, is shocking.

The unions are telling the Court in this case that "It is right and proper for the federal government to help us collect money from unwilling employees, but after the money is in our hands, it's nobody's business what we do with it because we are a private organization."

As noted in part II D of this brief, it is a denial of due process for the government to appropriate private property for private purposes.

At this point it is significant that the extraction of money from the minority employees, coupled with the assertion by the unions of a right to spend the money as "private organizations," may have the effect of coercing the minority to associate themselves fully in the union affairs despite their personal desire not to do so. In *Public Utilities Commission of the District of Columbia et al. v. Pollak*, 343 U. S. 451, 468 (1952), Mr. Justice Douglas, dissenting, said:

"If we remembered this lesson taught by the First Amendment, I do not believe we would construe 'liberty' within the meaning of the Fifth Amendment as narrowly as the Court does. The present case involves a form of coercion to make people listen. The listeners are of course in a public place; they are on street cars traveling to and from home. In one sense it can be said that those who ride the street cars do so voluntarily. Yet in a practical sense they are forced to ride, since this mode of transportation is today essential for many thousands. Compulsion which comes from circumstances can be as real as compulsion which comes from a command."

Here, as is indicated by the AFL-CIO brief, if employees are not willing to have their money used for any political purposes the union wishes, they must participate, likewise

unwillingly, in the internal affairs of this "privatization". Such participation is more than the *forma* membership contemplated in *Hanson*. It is an *actual* membership *coerced* by circumstances involving a denial of the freedom of association necessarily includes freedom not to associate.

This Court has forcefully condemned even subtle restrictions of freedom of association. *Wieman v. Updegraff*, 344 U. S. 183, 191 (1953). The Court declared unconstitutional an Oklahoma statute imposing disqualification for public employment on persons of "disloyalty" because "... under the Oklahoma Constitution the fact of association alone determines disqualification; it matters not whether association is innocent or knowingly. To thus inhibit individual freedom of movement is to stifle the flow of democratic expression and controversy at one of its chief sources." See also the *Alabama* and *Little Rock* cases, *supra*.

The individual's relation to politics—the part he plays in shaping the destiny of our government—is of great significance. As this Court observed in *United States v. United Auto Workers*, 352 U. S. 567, 570 (1957), "the application of the Federal Corrupt Practices Act to union expenditures:

"Appreciation of the circumstances that surround the statute is necessary for its understanding, and a full understanding of it is necessary for adjudication of the problems before us. Speaking broadly, what is involved here is *the integrity of our electoral process and, not less, the responsibility of the individual citizen for the successful functioning of that process*." This case thus raises issues not less than those of a democratic society" (italics added).

See also *United States v. Congress of Industrial Organizations*, 335 U. S. 106, 148-149 (1948), where the Court expressed concern for the individual union member whose payments to the union being diverted to political purposes contrary to his own views.

The essential function of the First Amendment is to keep free the channels of action and expression between government and the governed. Its roots are found in the historic conflicts that attended efforts to compel support or to quell criticism of government officers, candidates, and policies. The highest calling of the Court is to assure that no man's voice in the processes of government is denied, diminished, influenced, or coerced, directly or indirectly through the force of government itself.

In succeeding portions of this Part II of our brief, we shall elaborate the relationship of such political freedoms to the freedoms of speech, press and association, and shall demonstrate that these fundamental freedoms are being destroyed or grievously impaired through the operation of the union shop contract.

2. The Union Shop Contract Deprives the Individual Appellees of Freedom of Speech and of the Press.

These two First Amendment Freedoms protect the individual's right to inform others of his opinions, however unpopular they may be. But the mass propagation of political and economic opinions requires money—substantial sums. In political campaigns, for example, a single nationwide television or radio program (or an advertisement appearing in many newspapers) may cost hundreds of thousands of dollars. Such a political effort is financed by small contributions from many hundreds or thousands of individuals supporting that candidate and wishing to convince the public that he ought to be elected. Such individual support, even though in the form of financial contributions, surely is a form of expression that is protected by the First Amendment Freedoms of Speech and of the Press.

The labor union appellants channel the dues, fees and assessments exacted of the individual appellees into such uses. We already have referred to special editions of "LABOR." Surely, it is a denial of Freedom of the Press or of Speech to force one to contribute to the mass circula-

lation of such newspapers where that individual is the candidate in whose favor such special edition is published.

The Court will recall that those special editions are published in the name of the public that the views expressed are on behalf of the members of appellants (and other "standard unions").

The moneys of the individual appellees are used to support radio programs propagating economic and political ideas of which they disapprove (R. 124). The economic and political content of those programs can be assessed by the summary each week in the "News" of one of the nightly broadcasts of the newscasters appearing on those programs. By being required to contribute to the amplification of these voices on economic and political matters, the appellees are being denied freedom of speech.

The record is full of other types of literature on economic and political matters to the increased circulation of which the individual appellees are required to contribute under the union shop agreement. For example:

"Labor Looks at the 85th Congress" (R. 144; Pl. Ex. No. 8; Tr. 394);

"Social Security—What Ike Said Then" (R. 144; Pl. Ex. No. 11; Tr. 412);

"Has Nixon Reformed?" (R. 144; Pl. Ex. No. 12; Tr. 413);

"How Your Senators and Representatives Vote" (R. 144-146; Pl. Ex. Nos. 13-14; Tr. 414, 415);

"Political Memos From COPE" (R. 147-148; Pl. Ex. Nos. 16-68; Tr. 417-469);

"Notes From COPE" (R. 148; Pl. Ex. Nos. 69-147; Tr. 470-480);

"COPE Reports" (R. 148-149; Pl. Ex. Nos. 148-149; Tr. 481-501);

"America Must Have" (R. 149; Pl. Ex. No. 150; Tr. 503);

"We're in this Together" (R. 149; Pl. Ex. No. 151; Tr. 504);

"They Planned it That Way" (R. 150; Pl. Ex. No. 152; Tr. 507).

The Supreme Court of Georgia stated (215 G. R. 269):

"One who is compelled to contribute the fruits of his labor to support or promote political or economic programs or support candidates for public office is just as much deprived of his freedom of speech as if he were compelled to give his vocal support to the trines he opposes. Abraham Lincoln asserted a similar view when he said: 'I believe each individual is equally entitled to the fruits of his labor, so far as no wise interference with any other man's right.' This is a common saying that, 'Money talks—some louder than the spoken word.' In the case at bar the personal convictions of the plaintiffs on political and economic issues are being combatted by the use of their financial contributions to foster programmatic ideologies which they oppose."

This statement correctly recognizes that the freedom of speech and of press go beyond the right of an individual to utter his own thoughts vocally, or write them out individually for transmission. Those rights are just as invaded where an individual's money is exacted and used to propagate orally and in writing thoughts which he opposes.

The intolerable position of the individual appellant is brought home with telling force by the following statement in the preamble to the Statute of Virginia for Religious Freedom (1786) drafted by Thomas Jefferson and adopted through the Virginia General Assembly by James Madison:

"To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical." Brant, *James Madison: Nationalist 1780-1787* (Bobbs-Merrill, 1948) 354.

In the area of freedom of speech there are certain truths which all citizens of this free country would "hold self-evident." One of these truths is:

"Liberty of speech and of writing is secured by the constitution; and incident thereto is the corresponding

liberty of silence, not less important (italics supplied). *Wallace v. Georgia*, Ga. 732, 22 S. E. 579 (1893).

Clearly, the action of the appellant union minority employees to speak on political as well as of their desires and contrary views is a fringement of the constitutional liberty of

A further self-evident truth is the one above quotation from the Georgia Supreme decision in this case—namely, that it is a violation of freedom of speech to compel a person to express his own views as if they were his own. By compelling individual appellees to join and pay dues, and to be represented politically by the unions, in order to work with the Southern Railway System, the union is requiring the individual employees to express their own views. Not only are they compelled to espouse the union "spokesman", causes which are abhorrent to them but they are forced to speak so loudly through the collective voice that their individual voices could not be heard to the contrary. Indeed, the enforced expression of the collective voice—heard throughout the Nation on radio broadcasts and newspapers—is so overwhelming that it takes the courage of an individual dissident employee to state the contrary view. Thus freedom of individual expression is not only drowned out by the collective expression, but it is for all practical purposes suppressed through hopeless discouragement. See *California*, 361 U. S. 147 (1959), where the Court held out that indirect suppression and discouragement of freedom of speech and press is unconstitutional.

Peonage is unlawful in this country. Intellectual freedom of the type advocated by the appellant union is fully and vigorously condemned by this Court. The suppression through the collective voice is degrading and comparable to the forced "confessions" which have taken place in the "Iron Curtain" countries. Certain

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jorities and officials and to establish them as
principles to be applied by the courts. One's rig
life, liberty, and property, to free speech, a free p
freedom of worship and assembly, and other f
mental rights may not be submitted to a vote;
depend on the outcome of no elections.

"We set up government by consent of the governed
the Bill of Rights denies those in power any lega
portunity to coerce that consent . . .

"If there is any fixed star in our constitutional
stellation, it is that no official, high or petty, can
scribe what shall be orthodox in politics, nationa
religion, or other matters of opinion or force ci
to confess by word or act their faith therein" (i
added).

Again, in *Wieman v. Updegraff*, 344 U. S. 183 (1953)
the Court held that expression of political adheren
the form of an oath could not, in keeping with the

stitutional command, be required as a condition to public employment.

This Court has repeatedly struck down monetary exactions in the realm of thought, belief and speech. Most recent is the decision in *Speiser v. Randall*, 357 U. S. 513 (1958). There California offered a tax exemption to veterans who would sign a declaration that they did not advocate forcible overthrow of the government. It deserves emphasis that freedom of speech thus was not impaired in the sense of the infliction of punishment or a penalty for the expression of proscribed ideas. The "freedom of speech" at stake was the freedom to remain silent, the freedom not to affirm or support a specified belief. It is the same freedom claimed in this case on behalf of these individual appellees and the class they represent.

This technical distinction of form did not deter the Court. The statute was struck down. Speaking for the majority, Mr. Justice Brennan wrote (357 U. S. at 518-519):

"It is settled that speech can be effectively limited by the exercise of the taxing power. *Grosjean v. American Press Co.*, 297 U. S. 233. To deny an exemption to claimants who engage in certain forms of speech is in effect to penalize them for such speech. Its deterrent effect is the same as if the State were to fine them for this speech . . . It has been said that Congress may not by withdrawal of mailing privileges place limitations upon the freedom of speech which if directly attempted would be unconstitutional. See *Hannegan v. Esquire, Inc.*, 327 U. S. 146, 156; cf. *Milwaukee Publishing Co. v. Burleson*, 255 U. S. 407, 430-431 (Brandeis, J., dissenting). This Court has similarly rejected the contention that speech was not abridged when the sole restraint on its exercise was withdrawal of the opportunity to invoke the facilities of the National Labor Relations Board, *American Communications Assn. v. Douds*, 339 U. S. 382, 402, or the opportunity for public employment. *Wieman v. Updegraff*, 344 U. S. 183. So here, the denial of a tax exemption for engaging in certain speech necessarily will have

the effect of coercing the claimants to refrain from the proscribed speech."

Looking through form to the substantive effect of the exactions to which the plaintiffs are subjected here, the result is the same. They are forced to supply funds for political candidates and ideologies to which they are opposed. To express their individual preferences and beliefs, and to support their own choices, they are compelled to pay twice, while other members can satisfy their political allegiances by the single union contribution. The practical effect is to penalize plaintiffs for their beliefs.

It must not be forgotten that the historical origin of the First Amendment was an attempt to impose money exactions for the support of religious beliefs, not direct suppression by penalizing expression. See I Stokes, *Church and State in the United States* 341-342, 388 (1959). This Court has repeatedly recognized this historical background to be authoritative on the meaning of that Amendment, and to be equally applicable to all forms of thought and belief. See *Reynolds v. United States*, 98 U. S. 145, 163-164 (1879); *Everson v. Board of Education*, 330 U. S. 1, 13 (1947). "Freedom of religion and freedom of speech guaranteed by the First Amendment give more than the privilege to worship, to write, to speak as one chooses; they give freedom not to do or act as the government chooses. The First Amendment in its respect for the conscience of the individual honors the sanctity of thought and belief." *Public Utilities Comm'n v. Pollak*, 343 U. S. 451, 467-468 (1952) (Mr. Justice Douglas, dissenting).

Entirely apart from the degrading effect on the individual of compulsory political representation, the form of intellectual bondage advocated by the appellant unions would be destructive of our free institutions. As this Court said in *Terminiello v. City of Chicago*, 337 U. S. 1, 4 (1949):

"The vitality of civil and political institutions in our society depends on free discussion. As Chief Justice Hughes wrote in *De Jonge v. Oregon*, 299 U. S.

353, 365, 57 S. Ct. 255, 260, 81 L. Ed. 278, it is through free debate and free exchange of ideas that government remains responsive to the will of the people and peaceful change is effected. The right to speak freely and to promote diversity of ideas and programs is therefore one of the chief distinctions that sets us apart from totalitarian regimes."

What is the opportunity for "diversity of ideas" and what distinguishes this Nation from totalitarian regimes if tremendous labor organizations are permitted to become in practical effect the sole spokesmen for their willing and unwilling members? As this Court further said in the *Thornhill* case (337 U. S. at 4-5):

"There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislative or judicial courts, or dominant political or community groups."

Such standardization of ideas is, of course, the objective of the appellant unions, despite its obvious repugnance to the Bill of Rights.

In *Roth v. United States*, 354 U. S. 476, 484 (1957) the Court expressed its concern for *individual* political freedom:

"All ideas having even the slightest redeeming social importance—unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion—have the full protection of the guaranties, unless they are excludable because they encroach upon the limited area of more important interests."

The Court said further (354 U. S. 488):

"The fundamental freedoms of speech and press have contributed greatly to the development and well-being of our free society and are indispensable to its continued growth. Ceaseless vigilance is the watchword to prevent their erosion by Congress or by the State. The door barring federal and state intrusion into this area cannot be left ajar; it must be kept tightly closed."

and opened only the slightest crack necessary to prevent encroachment upon more important interests."

What "more important interests" could possibly be suggested as a reason for destroying the right of these individual appellees to be heard effectively on political subjects? Certainly there is no national interest in suppressing their political ideas if none could be found in the cases cited above where subversion and obscenity were alleged. No national interest has been declared by Congress to require suppression of the political ideas of the minority employees. There is no suggestion of a Congressional purpose to "standardize ideas", and the national interest, as repeatedly recognized by this Court, is opposed to such standardization.

Not only is there no Congressional declaration of a purpose to be served by suppressing the views of minority employees or compelling them to accept political representation by their political foes, but, to use the language of the Court in *Sweezy v. New Hampshire*, 354 U. S. 234, 251 (1957), in a comparable situation:

"We do not now conceive of any circumstance where in a state interest would justify infringement of rights in these fields."

If, as the Court held in *Everson v. Board of Education*, 330 U. S. 1, 15 (1947), government may neither "force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion," are not political beliefs and rights of political expression entitled to the same protection, under the same Amendment? As this Court said in *Thomas v. Collins*, 323 U. S. 516, 531 (1945):

"The First Amendment gives freedom of mind the same security as freedom of conscience."

Whether or not the First Amendment freedoms are entitled to a preferred position, these individual appellees

have a right to express their own political views and not be compelled by agents forced upon them by governmental action to accept and pay for political representation by their political foes—collective representatives with great power, resources and amplification that they can do submerge and suppress the views of minority employee groups.

In Part II A of this brief it is demonstrated that the federal government is the decisive force in compelling individual appellees to contribute funds to the unions as a condition of continued employment. This means that the *government* which requires the payments which are used for political purposes. Such a result is contrary to the principle, implementing the spirit of the Constitution and impelled by its letter, that political activity must be left to individual conscience, choice and belief, without support or support from government.

The examples of this pervasive federal policy are legion. A few will suffice to make the point. During the last term this Court applied that policy in *Cammarano v. U. S. States*, 358 U. S. 498 (1959), a case involving deduction for income tax purposes of contributions to an organization engaged in political activity, to defeat a proposal that would have driven the taxpayer out of business. The opinion adopts the language of Judge Learned Hand in holding that the federal government's "sharply defined policy" forbids support, direct or indirect, for "political agitation, however innocent the aim. . . . Controversies of that kind must be conducted without public subvention" 358 U. S. at 512. The denial of the claim that political contributions were "ordinary and necessary" business expenses meant that the taxpayers were, as Mr. Justice Harlan said, "simply being required to pay for those activities entirely out of their own pockets, as everyone else engaging in similar activities is required to do" The legislative history, therefore, expressed "a determination by Congress that since purchased publicity can influence the federal legislation which will affect, directly or indirectly, and

the community, everyone in the community should stand on the same footing as regards its purchase so far as the Treasury of the United States is concerned." 358 U. S. 513.

Elsewhere, Congress has carried forward this "sharply defined policy" by prohibiting the use of federal employment as a club to coerce political contributions or activity, assuring that government employees will not "be subjected to pressure for money for political purposes." *United States v. Wurzbach*, 280 U. S. 396, 398 (1930). The purpose was elaborated by Mr. Justice Douglas, concurring in part and dissenting in part in *United Public Workers v. Mitchell*, 330 U. S. 75, 125-26 (1947):

"The public interest in the political activity of a machinist or elevator operator or charwoman is . . . in the preservation of an unregimented industrial group, in a group free from political pressures of superiors who use their official power for a partisan purpose. Then official power is misused, perverted. The Government is corrupted by making its industrial workers political captives, victims of bureaucratic power, agents for perpetuating one party in power."

Here, as demonstrated below (Appendix, pp. 11a-21a), the power of government is being used by the unions to coerce contributions used by the unions "for perpetuating one party in power."

A full chapter of Title 18 of the United States Code is occupied by Congressional enactments embodying the policy that no benefit or economic advantage dependent upon federal power should be used as the instrument of political coercion. Chapter 29, §§ 591-612, *passim*, Title 18, United States Code. Yet, the Court is asked by the appellants in this case to hold that Congress can and did subject railroad employees to the threat of loss of livelihood as the means of exacting political contributions.

Congress has effectuated this fundamental policy in another direction as well. In addition to protecting employees whose jobs may be affected by federal power, the legis-

lature has forbidden political contributions by organizations created or existing by virtue of federal powers exercising rights or powers conferred by the federal government. It is therefore "unlawful for any national or any corporation organized by authority of any Congress, to make a contribution or expenditure in connection with any election to any political office" 610, Title 18, United States Code. A licensee for radio or television broadcasting enjoys a benefit flowing from federal authority and is, pursuant to this policy, prohibited to use the power for partisan purposes. Equal time must be afforded to all candidates on the same terms, no censorship, under Section 315 of the Federal Communications Act of 1935, 48 Stat. 1088 as amended, 47 U.S.C. § 315(a). See *Farmers Union v. WDAY*, 360 U.S. 915 (1959). The defendant unions here enjoy analogous federal benefits in their designation as exclusive bargaining agents for all employees in a craft or class, with attendant powers and protections.

In an effort to bolster their remarkable claim of no duty to exact political tribute, the appellants assert baldly that there is nothing unusual in the situation because judges and lawyers are regularly required to make contributions to political candidates as a condition to the right to practice in the profession (appellants' brief, pp. 47-48). The answer is that the assertion is simply untrue. Here, as elsewhere, the appellants have ignored the critical distinction made plain in the *Hanson* case between a legal duty to join an organization and a duty to pay whatever a majority may demand for support of any ideological program, candidate, or policy. Bare membership may raise questions of freedom of association, but it does not raise what the appellants seek to justify. The appellants have referred to no decision which supports their extraordinary statement that the practice of law may be conditioned on partisan political adherence; it is not possible to predict that none will be found. The attempt to gloss over the fact that the decisions are aligned in two

separate categories cannot succeed. An integrated bar is permissible, as the *Hanson* case observes. A voluntary bar association, which the judge or lawyer is free to join or not to join, and from which he is free to resign in protest, may engage in partisan political activity. But the two propositions may not be combined. It should be noted that the two cases cited in the appellants' brief (pp. 44-45) for the proposition that bar association endorsement of candidates for judicial office or the position of state's attorney may be allowed were decided in states *not* among those having an integrated bar according to appellants' own list (appellants' brief, p. 47, note). In fact, those two cases did not involve state bar associations. *LaBelle v. Hennepin County Bar Ass'n*, 206 Minn. 290, 288 N. W. 788 (1939); *Smith v. Higinbotham*, 187 Md. 115, 48 A. 2d 754 (1946). Certainly this Court has never approved a plan to make the right to pursue a legal calling conditional upon partisan political affiliations and support, and in view of its vigorous protection of the lawyer's beliefs and convictions, it is safe to predict that the Court will never sustain such oppression. See *In Re Sawyer*, 360 U. S. 622 (1959); *Schwartz v. New Mexico Bar Examiners*, 353 U. S. 232 (1957); *Konigsberg v. California State Bar*, 353 U. S. 252 (1957).

Appellants refer particularly to the situation in Wisconsin and rely heavily on *In re Integration of the Bar*, 5 Wis. 2d 618, 93 N. W. 2d 601 (1958). That case, however, is merely typical of state decisions sustaining integrated bars as facilities of state supreme courts for maintaining supervision over the practice of law. It points out that an integrated bar is actually a part of the state government. Thus, the Supreme Court of Wisconsin said (93 N. W. 2d at 603):

"... The practice of law in the broad sense, both in and out of the courts, is such a necessary part of and is so inexorably connected with the exercise of the judicial power that this court should continue to exercise its supervisory control of the practice of law."

Appellants say that in that decision the Supreme of Wisconsin ruled that the integrated bar was to spend its money for any purposes it pleased, including political activities. This simply is not true. On the contrary, the Wisconsin court emphasized the limited purpose of the integrated bar and the accountability of the bar court (93 N. W. 2d at 605):

" . . . The integrated State Bar of Wisconsin is independent and free to conduct its activities within the framework of . . . [its] Rules and By-laws. Within their confines, this court expects the Bar to act autonomously and independently on all matters which *properly* purposes for which the Bar was integrated and the general supervisory power of the court (added).

Appellants flatly state, at page 46 of their briefs, that courts in integrated bar cases have rejected arguments in all respects similar to" the arguments of appellees in this case at bar. In support of this confident assertion, they cite *In re Florida Bar*, 62 So. 2d 20 (1952), and *Mundy*, 202 La. 41, 11 So. 2d 398 (1942). However, these citations too are wide of the mark.

In re Florida Bar did not even involve an integrated bar attorney. It was a petition of the integrated bar for authority to increase annual dues. The Supreme Court of Florida allowed the petition, providing that dues should be set at an annual meeting each year and should not exceed \$10.00 per year. By no stretch of the imagination can the case be read as authority for an integrated bar to force attorneys, as a condition of practicing law, to support political, propaganda, and legislative projects which they are opposed.

In re Mundy is simply one more of the line of cases holding that a state can integrate its bar and force all attorneys in the state, as a condition of practicing law, to pay the annual dues of the state bar association.

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. As in *In re Florida Bar*, there is nothing in *In re Mundy* that could conceivably be construed as a ruling that an attorney can be barred from the practice of law for refusal to support political, propaganda, and legislative activities of an integrated bar association.

What appellants have done is clear. They have taken two cases involving voluntary bar associations, wherein it was held that political activities of such organizations were not within corrupt practices legislation. To these appellants have added three cases holding that attorneys can be compelled to belong and pay dues to integrated bar associations, in not one of which was a word said about political, propaganda, or legislative activities of such associations. From this mixture, appellants have derived a "settled rule of law" that attorneys can—and regularly are—forced, as a condition of practicing law, to pay dues to an integrated bar association which may be used by the association to support political, propaganda, and legislative activities to which the attorney is opposed.

There are, in fact, no state court decisions holding that an attorney may be compelled, as a condition of pursuing his profession, to contribute financial support to political propaganda, or legislative campaigns of an integrated bar association.

One may question whether involuntary support of partisan political activity by an integrated bar association will ever come before the courts. It is difficult to imagine that such an association, constituting a part of state government and acting directly under the supervision of the courts, would ever engage in partisan politics, for that would mean that the state itself was engaging in politics. The picture of a state supreme court endorsing and supporting a slate of candidates in a contested election is wholly at odds with our concept of the electoral system.

The unions contend that forced political representation by them of all employees is necessary for the accomplishment of their objectives, and, because it is necessary, it is also justified. Perhaps the clearest statement of that philosophy

philosophy of the unions is contained in the 1 as "amicus curiae" by the AFL-CIO, whe (p. 12):

"Assume that a union is engaging in action when it spends funds on political so is subject to the due process restriction Fifth Amendment. Nonetheless, the governmental body and the nature and the activities proper to it surely can be only on the basis of the peculiar needs of its formation. As was said by a political whose credentials antedate even those of A state arises out of the needs of man

While the authority quoted by the AFL-CIO is antiquated, he is so ancient (Plato, *The Republic* 60 (Modern Library ed.)) that he antedates this Court but also the more modern conception on which our forefathers founded this Nation, it has always been held to be a truth (Declaration of Independence) "That to secure these rights [Life, Liberty and the pursuit of happiness] Governments are instituted among Men, deriving their powers from the consent of the governed" (it). Thus, if there is indeed a "labor state", any power it may possess must be derived "from the consent of the governed"—not from imposition by legislative usurpation by the claimed political representative on grounds of "necessity". Alleged "necessity" without the consent of the governed has formed the basis of totalitarian government in the history of man

3. Appellants Force Ideological Conformity Through "Political Education."

The trial court found (R. 103) that funds were used to impose upon the plaintiffs and the class, as well as upon the general public, conform

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doctrines, concepts, ideologies and programs" espoused
appellants and opposed by the individual appellees.
pages 39 and 88-89 of their brief, appellants assert
there is no record basis for such a finding, and that
terms of the union shop agreement itself preclude such
finding since (brief, p. 89):

"The agreements themselves, as well as Section
Eleventh, provide that if membership in the labor
organization is denied or terminated for any reason other
than the non-payment of uniform dues, fees and
assessments (not including fines and penalties),
union shop agreement would not be applicable to
such person. Under those provisions, no one can
be required to conform to any ideologies or concepts
or programs; indeed, he is free to oppose them."

That argument is specious—it begs the very question
issue here. It accuses this Court of insincerity in promises
in the *Hanson* case, to protect against the use of the union
shop "as a cover for forcing ideological conformity."

Appellants apparently would have this Court constitute
"forcing ideological conformity" as embracing only a situation
where the union appellants could in fact compel
employee to believe a union precept in order to retain
job. Of course, such a situation could not arise since
the employee's actual beliefs could not be known and
the Act clearly would not permit discharge for a failure
or refusal to believe. Thus appellants are creating
demolishing a straw man.

The threshold "condition" or "term" imposed upon
employed employees is the tender of periodic dues, fees
assessments—the condition held lawful and constitutional
in *Hanson*.

Once the money is in the union's till, they say (ap-
pellants' brief, p. 27; see also brief tendered by AFL-CIO
pp. 8-9):

"There is no condition or limitation based upon
use to which the labor organization puts the fees, dues
and assessments."

Appellants say further (brief, p. 40) :

"Obviously using funds to pay for radio publications does not impose conformity. of the employees, equally with each n public generally, free to make up his own free to listen or read or not to listen or

The issue is not so simple. We again refer to Mr. Justice Douglas' dissenting opinion in U. S. at 467-469) :

"Liberty in the constitutional sense much more than freedom from unlawful government. it must include privacy as well, if it is to be the very essence of freedom. The right to be let alone is the beginning of all freedom."

* * * * *

"The First Amendment in its respect for the individual honors the sanctity of conscience, belief. To think as one chooses, to believe as one wishes are important aspects of the right to be let alone.

"If we remembered this lesson taught by the First Amendment, I do not believe we would have 'free speech' within the meaning of the Fifth Amendment as narrowly as the Court does. The present case is a form of coercion to make people listen. They are of course in a public place; they are traveling to and from home. In one sense, the Court said that those who ride the streetcars are free. Yet in a practical sense they are not free since this mode of transportation is used by millions for many thousands. Compulsion which exists in these circumstances can be as real as compulsion comes from a command.

"The streetcar audience is a captive audience there as a matter of necessity, not of choice. One who is in a public vehicle may not of course avoid the noise of the crowd and the babble of

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"The government may use the radio (or tele-
on public vehicles for many purposes. Today,
use it for a cultural end. Tomorrow it may use
political purposes. So far as the right of pri-
concerned the purpose makes no difference. The
selected by one bureaucrat may be as offen-
some as it is soothing to others. The news com-
for chosen to report on the events of the da-
give overtones to the news that please the
head but which rile the streetcar captive au-
The political philosophy which one radio s-
exudes may be thought by the official who ma-
the streetcar programs to be best for the wel-
the people. But the man who listens to it on h-
to work in the morning and on his way home a-
may think it marks the destruction of the Repu-

"One who tunes in on an offensive program a-
can turn it off or tune in another station, as he-
One who hears disquieting or unpleasant progr-
public places, such as restaurants, can get up and
But the man on the streetcar has no choice bu-
and listen, or perhaps to sit and to try *not* to

"When we force people to listen to another's
we give the propagandist a powerful weapon. T-
is a business enterprise working out a radio pr-
under the auspices of government. Tomorrow
be a dominant political or religious group. Tod-
purpose is benign; there is no invidious cast-
programs. But the vice is inherent in the s-
Once privacy is invaded, privacy is gone. Once
is forced to submit to one type of radio progr-
can be forced to submit to another. It may be
short step from a cultural program to a politic-
gram.

"If liberty is to flourish, government should
be allowed to force people to listen to any rad-
gram. The right of privacy should include the
to pick and choose from competing entertain-
competing propaganda, competing political

ophies. If people are let alone in those choices, the right of privacy will pay dividends in character and integrity. The strength of our system is in the dignity, the resourcefulness, and the independence of our people. Our confidence is in their ability as individuals to make the wisest choice. That system cannot flourish if regimentation takes hold. The right of privacy, today violated, is a powerful deterrent to any one who would control men's minds."

We have shown above how appellants seek to equate the word "forcing" in *Hanson* with "commanding" or "expressly requiring".

Logically extended, the appellants' argument would require the Court to hold that freedom of thought, belief, conscience, and speech is not infringed by any monetary tax, fine, or penalty, nor indeed by imprisonment or any punishment short of death, since the mind would remain free in any case to believe. The First Amendment does not yield to such word play.

The contention of the appellants that, in effect, the employees need not be affected by constant exposure to political and ideological propaganda is contrary to the considered conclusions of the courts in cases involving religious instruction in the schools. In *Schempp v. School District of Abington Township, Pa.*, 177 F. Supp. 398, 404-405 (E. D. Pa. 1959), the Court said:

"The daily reading of the Bible buttressed with the authority of the State, and more importantly to children, backed with the authority of their teachers, can hardly do less than inculcate or promote the inculcation of various religious doctrines in childish minds. Thus, the practice required by the statute amounts to religious instruction, or a promotion of religious education. It makes no difference that the religious 'truths' inculcated may vary from one child to another. It also makes no difference that a sense of religion may not be instilled. . . . In our view, inasmuch as the Bible deals with man's relationship to

God and the Pennsylvania statute may require a daily reminder of that relationship, that statute aids all religions. Inasmuch as the 'Holy Bible' is a Christian document, the practice aids and prefers the Christian religion."

The Court there further said (177 F. Supp. at 406):

"The argument made by the defendants that there was no compulsion ignores reality and the forces of social suasion. *Tudor v. Board of Education*, 1953, 14 N. J., 31, 100 A.2d 857, at pages 866-868, 45 A. L. R. 2d 729."

The Court further said (177 F. Supp. at 407):

"The daily reading of the Bible operating upon the receptive minds of children helps them to listen with attention. This indoctrinates them with a religious sense. This under the circumstances at bar constitutes an interference with the free exercise of religion."

While the *Schempp* case involves children, it could hardly be argued that adults are not susceptible to bombardment with political propaganda such as appellants incorporate in their various publications.

In *McCollum v. Board of Education*, 333 U. S. 203, 212 (1948), this Court clearly indicated that, even if religious instruction does not favor one religion over another, the power of government may not be used to aid in the instruction:

"Here not only are the state's tax-supported public school buildings used for the dissemination of religious doctrines. The State also affords sectarian groups an invaluable aid in that it helps to provide pupils for their religious classes through use of the state's compulsory public school machinery. This is not separation of Church and State."

Similarly, in this case, the federal government, through the union shop which it has sponsored and which it enforces

(see Part IIA of this brief), offers "invaluable aid" to the unions by giving them a "captive audience" in the form of all of the employees who are compelled to join the union in order to retain their jobs.

The author of the majority opinion in *Hanson* also wrote the language quoted above from *Pollak*. We think that, consistently, in using the word "forcing" in *Hanson*, he meant it in the sense defined above—namely, a "coercion" or "compulsion" which may come from "circumstances" as well as from a "command". In this light, the language in *Hanson* directly applies, since the dues, fees and assessments exacted from individual appellees under the union shop agreements are being used "as a cover for forcing ideological conformity." The "circumstances" which we claim amount to such coercion are set forth below:

First, the employee is compelled by the federal government, the railroad employer, and the labor union to identify himself as a member of a group—the labor union—even though such identification is only the minimum acquiescence in *pro-forma* membership. Whatever his attitude toward the union has been before, it is different after this ceremonial act of joining or paying dues. The very ritual of dues payment or initiation contains an element of mental submission. Compare the compulsory ritual in the *Barnett* (flag salute) case, *supra*.

Furthermore, while some tough-minded individuals, such as the named appellees, may resist regimentation, it is probable, as Congress, the unions and the railroads all have realized, that the great preponderance of employees, upon being told they must join the union, will join—not just in a *pro-forma* sense, but in a genuine sense.

In any event, an initiation fee, or reinstatement fee, and periodic dues are paid to the union. So far, according to *Hanson*, no constitutional rights have been infringed. But what is it that the employee is required to pay for?

The record shows that appellees Davis, Cobb and Streeter have been required to pay initiation fees and reinstatement

fee and \$3.00 per month in dues to the appellant, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees ("BRC"), since June, 1958 (R. 203-204).

The "official publication" of the BRC is "The Railway Clerk" (R. 198, 199; Tr. 915—Constitution BRC, p. 54). Members of BRC must contribute 30¢ of initiation fees, 45¢ of reinstatement fees and 10¢ of each month's dues (\$1.20 per year) to pay for "The Railway Clerk" (R. 190; Tr. 915—Constitution BRC—pp. 64, 65, 93), which a stranger could subscribe to for one dollar a year (*id.*, p. 55).

Employees required to join the Brotherhood Railway Carmen of America must pay for the "Carmen's Journal," the official organ of that union (R. 190, 199; Tr. 910, Constitution—Brotherhood Railway Carmen of America, p. 23)—10¢ per month if a coach cleaner, 11¢ per month if a helper or apprentice and 12½¢ per month if a mechanic (*id.*, pp. 20, 23, 49).

Signalmen must pay \$1.80 per year for the "The Signalmen's Journal" (R. 190, 199; Tr. 911, Amendments to Signalmen's Constitution, p. 8).

Electrical Workers must pay 10¢ per month for "The Electrical Workers Journal," the official publication of the International Brotherhood of Electrical Workers ("IBEW") (R. 190, 199; Tr. 912, IBEW Constitution, pp. 26-27, 28).

Train dispatchers must pay \$2.00 per year as subscriptions to "The Train Dispatcher" (R. 190, 199; Tr. 912, Constitution of the American Train Dispatchers' Association, p. 36).

Boilermakers and Blacksmiths pay 16¢ per month for the "Boilermakers and Blacksmiths Journal" (R. 190, 199; Tr. 913, Constitution—Boilermakers and Blacksmiths, pp. 33, 41).

Maintenance of Way employees must pay for the "Maintenance of Way Journal" and "LABOR." No specific allocation of dues is made to those periodicals, as in the situations mentioned above, but the subscription price of the

"Maintenance of Way Journal" to outsiders is \$2.00 per year (R. 190, 199; Tr. 913, Maintenance of Way Constitution, p. 33). "LABOR's" subscription rate is \$1.00 per year (Tr. 508).

A part of the \$1.30 monthly per-capita tax which a machinist must pay includes the subscriptions paid to "Machinist" (R. 190, 199; Tr. 914, I.A.M. Constitution, p. 19).

Telegraphers must pay \$1.50 per year for "The Telegrapher" (R. 190, 199; Tr. 915, Telegraphers' Constitution, p. 33).

Sheet metal workers must pay \$1.00 per year for "Sheet Metal Workers Journal" (R. 190, 199; Tr. 916, Sheet Metal Workers' Constitution, p. 82).

While employees represented by other union appellants must subscribe to the official journals of those appellants (R. 190, 198-199), the precise amount of the required dues allocated to such subscription is not of record as to the "Firemen and Oilers Journal", the "Washington Log Book for the Masters, Mates and Pilots", the "Railroad Yardmaster" or the "American Marine Engineer."

The required subscription to these periodicals is, in itself, a direct violation of the individual appellees' First Amendment rights, and is an "exaction of dues, initiation fees, or assessments" which "is used as a cover for forcing ideological conformity."

Appellants may argue that the union constitutions showing that a part of the employees' dues would be used to purchase subscriptions to such periodicals was of record in *Hanson* (Tr. (451) 101 ff.). But the Court then had no way of knowing the ideological and political content of such journals; for all that record showed they were devoted 100% to genuine collective bargaining matters. Here the record clearly shows the content and purpose of the publications.

As pointed out above, the appellants argue (brief, p. 40)

"Obviously using funds to pay for . . . publication does not impose conformity. It leaves each of the

ployees, equally with each member of the public generally, free to make up his own mind, indeed, free to . . . read or not to . . . read."

We disagree. Is this Court to hold that a man may be required, as a condition of continued employment, to subscribe to "The Daily Worker", or to "Nation's Business", or to the official publication of a political party, and that the requirement does not constitute "forcing ideological conformity"? The political and ideological content of the labor union journals makes the principle equally applicable here.

Even though no one may stand over the employee with a club and force him to read the journal, nevertheless he bought the journal with his own money and he is no more expected simply to throw it away than the plaintiff in *Pol-lak* was expected to get off the streetcar and walk. Furthermore, as an inspection will show, even the front covers frequently carry an ideological or political message—and the journals also carry some useful non-political information. The unions are not wasting their efforts—they know the vast majority of employees will be affected by their propaganda.

But the important thing to remember is that appellants and their affiliates do not rely on coercing a particular individual employee. We are dealing here with enormous numbers of people and a mass response is the objective. That can be achieved though the techniques which we will describe below, and the result is the desired conformity of action and thought by a high percentage of those exposed to the unions' political education. We think the individuals' constitutional rights are infringed by such exposure, even though actual conformity is not achieved in some individual cases.

Mr. George L. O'Brien, Assistant General President, Brotherhood Railway Carmen of America, writing in March, 1956, said (Tr. 688, p. 10):

"This year, 1956, will be the first year in which all labor organizations in the United States will be united

in their political efforts. The leaders of our parties are very much alive to this fact and frequently are now centering their attention on every activity of the leaders of the trade union. The reason for this close study is quite obvious—the combined membership of labor today is estimated at *seventeen million* [the motion for leave to file an *amicus curiae* filed by the AFL-CIO claims 13 million]. Without doubt organized labor constitutes a tremendous block of votes, which in the opinion of this writer could very easily decide a national election—but it would but vote unitedly.

"The \$64,000 Question"

"The \$64,000 question is, will they? Will the rank and file of labor listen to the advice of their political leaders on political candidates? Will these same rank and file follow the advice given and cast their votes intelligently?"

The "\$64,000 question" posed by Mr. O'Brien is a very real one. The gravity of the situation is due to two factors: (1) the currently effective political parties in our two-party system are organized (or divided), by and large on a vertical basis (cutting across all segments and groups of voters) whereas the hoped-for united appeal of the new party is on a horizontal basis—seeking to convert an entire group; and (2) that group is of sufficient size, as Mr. O'Brien points out, to carry without question any contest, presidential or otherwise, in which it is able to mobilize the entire group (and the voters within the group's sphere of influence) behind the same candidate. For example, in the 1958 presidential race, there were approximately 60 million voters. If it is clear that 13,000,000 votes solidly behind one candidate from one group only would be more than enough to decide the election. Mr. Alexander Barkan, COPE's National Director, gave a tentative "answer" to the "\$64,000 question" (*American Federationist*, May, 1958, Tr. 869-871):

"We Can Do the Job"

.

"In February, 1957, the [Survey Research Center of the University of Michigan] published a study showing the composition of the American electorate in the 1956 election. It estimated that 15 percent of the population was strongly Republican, 14 per cent weakly Republican, 23 percent independent, 23 percent weakly Democratic, 21 percent strongly Democratic and 4 per cent non-political.

"Lumping those without strong views together, it comes out 15 percent Republican, 21 percent Democratic, 60 percent without fixed views and 4 percent with no views at all.

"In the 1956 election President Eisenhower got a substantial majority of the 60 percent who occupy the middle ground between strongly Republican and strongly Democratic.

"Against that background it is useful to look at the way people classified as 'workers' voted. Union members voted 52 per cent for the Democratic candidate for president who was recommended by the AFL-CIO General Board and 48 percent for the Republican candidate. The contrast with the voting behavior of the general public, of which union members are a part, is marked. The contrast with the voting behavior of the non-union 'workers' is even greater.

"While 52 per cent of the union 'workers' voted for the candidate recommended by the AFL-CIO, only 48 per cent of the non-union 'workers' voted for the same candidate. Sixty-five per cent of the non-union workers voted for the opposing candidate, while 48 per cent of the union 'workers' voted for the same candidate."

.

"More detailed study confirmed the findings. In the unions *which expressed a clear political preference in their publications*, whose leaders took strong stands and gave direction to their members, the vote for backed candidates was higher than in unions in which this was not the case" (italics added).

Of course, it is public knowledge that the effort of the AFL and the CIO was felt with effect in the 1958 Congressional races. Assumption of this trend, we will have what a National one-party system—a long step toward socialism. The ultimate result of the unconstitutionality of the union shop agreement (and many other things) is terrifying indeed.

The record contains copies of, and excerpts from, the defendants' official journals as follows:

- "Boilermakers and Blacksmiths Journal" Exhibits 231-237, 243, 247-252; Defendants' Exhibits 1-7, 12-17; Tr. 632-658);
- "Sheet Metal Workers' Journal" (Plaintiffs' Exhibits 253-260; Tr. 659-666);
- "Electrical Workers' Journal" (Plaintiffs' Exhibits 267; Defendants' Exhibits 18-30; Tr. 666-687);
- "The Carmen's Journal" (Plaintiffs' Exhibits 301; Tr. 687-695);
- "The Maintenance of Way Journal" (Plaintiffs' Exhibits 277-282; Tr. 696-701);
- "The Telegrapher" (Plaintiffs' Exhibits 702-704);
- "The Railroad Yardmaster" (Plaintiffs' Exhibits 291; Tr. 705-710);
- "Firemen and Oilers Journal" (Plaintiffs' Exhibits 297; Tr. 711-716);
- "The Signalmen's Journal" (Plaintiffs' Exhibits 301; Tr. 717-720);
- "The Train Dispatcher" (Plaintiffs' Exhibits 721-723);
- "The Railway Clerk" (Plaintiffs' Exhibits 389; Tr. 737-739; 870-880); and
- "The Machinist" (Plaintiffs' Exhibits 390-399).

With respect to all such official journals (including the "American Marine Engineer" and the "Washington Book" of the Masters, Mates and Pilots, of which there are records) it is stipulated that the report is "of a non-objective type and is designed to

unified political
 h even more ef-
 assuming a con-
 amounts to a
 ard totalitarian-
 onal application
 others like it) is
 erpts from, ap-
 al" (Plaintiffs'
 adants' Exhibits
 ntiffs' Exhibits
 s' Exhibits 261-
 667-686);
 xhibits 268-276;
 ntiffs' Exhibits
 ts 283-285; Tr.
 s' Exhibits 286-
 s' Exhibits 292-
 s' Exhibits 298-
 xhibits 302-304;
 ts 313-315, 379-
 90-416; Tr. 881-
 (including "The
 Washington Log
 which no copies
 eporting therein
 to influence the

readers thereof toward the particular political phi-
 espoused by that publication, but to which plaintiffs
 vening plaintiffs, and the class they represent are of
 (R. 189-190).

Appellants' official journals publish, among other
 the following (the first numerical reference is to the
 of the unprinted official transcript; numbers in
 theses refer to the pages of lengthy documents):

1. *RLPL's endorsements of candidates*: 636; 637 (20); 646 (21-23); 690 (47); 691 (7); 702 (9); 703 (39-40); 704 (4-6); 707 (5); 712 (2); 713 (2); 870 (9); 871 (9); 872 (16); 873 (16); 874 (8-9); 877 (16); 878 (6);
2. *COPE's Voting Records 1947-1956*¹: 646 (16);
3. *Appeals to support RLPL, MNPL and COPL*: 655; 658 (inside back cover); 660 (5); 678; 679 (16); 689 (front cover, 4); 690 (3, 7, 9); 693 (25); 694 (16); 695 (4, 11); 698 (33); 704 (12, 18); 705 (74); 706 (16); 707 (47); 708 (3); 709 (5); 710 (11); 712 (1); 713 (16); 715 (back cover); 716 (7-8); 717 (137); 718 (183); 870 (8, 12, 13); 872 (16); 874 (back cover); 881-885;
4. *Appeals to register and vote*: 640, 643, 645 (16); 646 (4, 6); 650, 660 (front cover, 5, 6, 14, 16-17); 661 (front cover); 666 (7); 673; 707 (front cover, 12); 711; 712 (front cover); 713 (inside back cover); 721 (182); 875 (14, 19); 876 (23); 877 (10, back cover);
5. *Politically and ideologically slanted editorial and editorial comment*: 645 (8-9); 649; 654; 655; 661 (front cover); 662 (2-3); 664 (5); 678; 692 (16); 694 (2); 696 (3, 7); 697 (inside front cover); 698 (inside front cover); 699 (inside front cover); 700 (9); 701 (inside front cover); 705 (5); 706 (3); 707 (3); 709 (23); 711 (1); 871 (14-15); 872 (16); 873 (14); 875 (15); 876 (15); 877 (6, 10, 13); 878 (17); 892; 900;

¹ Each union member was sent, at his home address, a copy of this "Voting Record" (Tr. 279-280).

6. *Politically slanted news,¹ articles, si-
tures*: 242; 637; 645 (10, 12); 646 (7, 2
660 (7); 661 (2); 662 (10); 664 (9); 665
691 (5); 692 (18); 698 (9); 699 (18-20
cover); 701 (14); 703 (43); 705 (26);
707 (12, 13, 28, 32-34, 35, 39); 709 (23
13, 15); 713 (front cover, 1, 10); 714 (1
719 (374); 721 (184); 723 (225, 236);
(7, 8, 9); 872 (7); 873 (17); 874 (4,
876 (7, 8, 9, 10, 11); 877 (3, 4); 878 (2, 3
886; 887; 890; 891; 894; 895-899; 901;

7. *Ideologically slanted news, articles, si-
tures*: 646 (6); 660 (3); 663 (3); 664 (1
688 (2); 693 (6); 706 (21, 30); 708 (3
713 (15); 721 (190); 722 (676, 682); 723
871 (3); 872 (3, 17); 873 (20); 876 (12)
879 (4, 15); 888; 893;

8. *Politically and ideologically slanted
(2); 664 (9); 666 (2); 695 (26); 700
cover); 701 (16); 704 (19); 708 (40);
(11).*

The "Political Memos from COPE" (Tr. 41
from COPE" (Tr. 470-480) and "COPE Repo
501), all of which are financed by AFL-CIO
derived from dues (R. 147-149), were all
and received by the union appellants her
149, 178). Those leaflets or pamphlets deal
political and ideological matter, and were
COPE's staff, and are published by appell
official journals, among possible other uses.
have not included in the record an unbrot
journals for each of the union appellants
to the periods for which the various CO
of record, there are several examples of such

¹ As an examination of these journals will show
in them that would be classified as "news" in an
its place is taken by what might be called news an
pretative stories.

stories and pic-
(24); 658 (8-9);
65 (15); 688 (9);
-20); 700 (front
5); 706 (5, 24);
(23, 29); 712 (5,
(9); 718 (300);
(9); 870 (19); 871
4, 8); 875 (13);
2, 3, 6); 879 (5);
1; 905; 908-909;

stories and pic-
4 (19); 666 (2);
(34); 710 (52);
723 (227, 241);
12); 878 (9, 16);

ed cartoons: 659
00 (inside front
) ; 709 (30); 713

417-469), "Notes
reports" (Tr. 482-
IO general funds
all distributed to
herein (R. 148-
deal strictly with
ere prepared by
pellants in their
es. Although we
broken series of
ts corresponding
COPE items are
uch use of COPE-

show, there is little
n any strict sense;
s analysis, or inter-

prepared materials in appellants' journals (cf. Tr. 652, etc.).

Likewise, there are several examples of use of journals of interpretative news articles written by Jenkins and Michael Marsh, associates on "LA" staff (Tr. 533, for example).

Also, the journals are used to urge appellants' not to listen to the nightly broadcasts of Messrs. Varney and Morgan (e.g., Tr. 647, 664 (inside back cover)). The best way to appraise their broadcasts for political and ideological content is through the excerpts from their nightly broadcasts found each week in the "A. J. News" (Tr. 953-993).

Appellants are employing a psychological and social device which was first named in 1901—"social control" (Edward A. Ross, *Social Control*, The Macmillan Co.—New York—1901). Its most comprehensive exposition is in a volume by the same name (Joseph S. Roucek Associates, *Social Control*, D. Van Nostrand Co. Inc.—New York—1947), where the following definition is found (p. 3):

"... social control is a collective term for the processes, planned or unplanned, by which individuals are taught, persuaded, or compelled to conform to the usages and life values of groups."

Here the individuals involved are the individuals of the group is represented by appellants and their organizations, and the specific social control program termed "political education."

We contend that these periodicals to which individuals are forced to subscribe are effective propaganda organs which, by such subscription, appellants are imposed on themselves. Like other media of propaganda, they

¹Roucek (*op. cit.*, p. 408) says: "Propaganda is the effort to control the behavior and relationships of social groups through the use of methods which affect the feelings and attitudes of the individuals who make up the groups."

"hidden persuaders" capable of accomplishing the social control which is the objective of the propagandists—the appellants unions.

A simple but workable statement of their immediate objective, and one which we believe is evident from the record, is that the appellants want their members to vote for the candidates supported by, and espouse the political and economic philosophies advocated by, the labor unions affiliated with the AFL-CIO.¹ How do they accomplish this objective other than by bluntly telling their members to conform?

The types of human behavior may be defined as "automatic" (or habitual); "institutional," or "doubtful." Roucek defines "institutional" behavior as "conduct which requires conscious choice, but where there are clear-cut guides as to what the choice should be" (p. 50) and "doubtful behavior" as "activity in situations where there are no guides in terms of good and bad or right and wrong" (p. 51).

The choice of what political candidates to support or what political and economic doctrines to adopt clearly is a matter lying in the field of "doubtful behavior." Therefore, in the case of such behavior, the first problem confronting the propagandist is to remove it to the institutionally-controlled field, or to that of unthinking habit (*op. cit.*, p. 58). Roucek says:

"Religious and political leaders, in their exhortations, usually try to transfer decisions from the doubtful field to that of 'good' and 'bad' considerations. Voters who go to the polls to decide between two candidates on the basis of all the knowable facts about them, and all the probable consequences of their election, are unpredictable voters, and politicians like to count their votes in advance. How much less complicated it is both for the voter and the politician if the

¹ Their ultimate aim, of course, would be to control the government so that its agencies can be used to their purposes.

voter is simply deciding between the fellow who is right and the fellow who is wrong. Undoubtedly most elections are decided on moral issues rather than on the basis of a myriad of complicated facts and probable consequences which enter into them" (p. 59).

The purpose behind the "right" and "wrong" scores in COPE's "voting record" becomes apparent. They make it simple for the voter.

Furthermore, appellants seek to remove the appellees' political decisions even further—into the realm of automatic, or habitual, behavior—*e.g.*, uncritical acceptance of RLPL endorsements. Thus, in the October, 1956 edition of the "Carmen's Journal," the members of that organization were told (Tr. 690, p. 3):

"Railway Labor's Political League has carefully considered all available information concerning the candidates. Where no endorsements are being made we urge you to carefully consider all information available concerning the public records and attitudes of the candidates and use your best judgment."

While the members are free to use their own judgments as to races where no endorsements are made, is there not an unmistakable, though subtle, suggestion that there is no need to do so as to those races where candidates are endorsed, since RLPL has already thoroughly considered the matter and made a judgment in the employee's best interest which it is only up to him to accept by voting for the endorsed candidate?

We have pointed out above that appellants constantly characterize their legislative programs and candidates as "forward-looking", "progressive", "liberal", "pro-labor", etc. This is an accepted propaganda device, the use of a "glittering generality." This device is defined in *Public Opinion and Propaganda* (Professor Frederick C. Irion, Thomas Y. Crowell Company—New York—1950) as (p. 735):

"... glittering generality—associating something with a 'virtue word'—is used to make us accept and approve the thing without examining the evidence."

The correlative labeling of the opponents of the candidate supported by appellants as "reactionaries," "anti-labor," and the like fits into another of the categories defined in Professor Irion's book (p. 735):

"... name calling consists in giving an idea a bad label and is used to make us reject and condemn the idea without examining the evidence."

Professor Irion says (p. 736):

"The distortion and misuse of words, deliberate and accidental, is an exceedingly grave problem for the general public. Any institution or institutions, which will define words accurately and then secure a maximum possible publicity for the accurate definitions, will be doing the people of the United States an invaluable service. For instance, a typical problem arises with the word 'liberal.' Both Democrats and Republicans call themselves liberal." What is the man-on-the-street to believe? If he could cut through the fog created by the different usages of the word 'liberal', if he were told that the Republicans generally use 'liberal' to mean a person who wants minimum activities by government and that the Democrats generally use 'liberal' to mean a person who wants government to intervene in behalf of the public, some of the dilemmas of the voting public would be solved. If the gobbledegook of business in its advertisements could be translated into meaningful terms, some of the dilemmas of the purchasing public would be solved. And so it would go in all fields. Of course, accurate definitions are not a panacea. But if the individual could obtain accurate definitions with a maximum of ease it would go a long ways toward eliminating some of the evil features of propaganda. As things now stand Mr. and Mrs. Joe Doakes and family have almost no way of determining the meaning of the labels and

stereotypes used in newspapers and on the air. Mr. and Mrs. Joe Doakes and family are ideal targets for propaganda, the truth or falseness of which has little to do with its acceptance."

The effectiveness of the printed propaganda of the appellants is heightened because they depart from accepted news reporting practices. Roucek points out with respect to standard journalism practices (*op. cit.*, p. 440): "Those who write for the editorial page may express opinions freely, and are expected to do so; but such expression is rigidly forbidden those who write for the general news pages." Consequently the public as readers of periodicals expect that opinion will be found on editorial pages, and are equipped to recognize it as such, but expect that the reporting of news will be relatively objective. That is not so in the literature to which the individual appellees are subjected (Stip., par. 50, R. 189-190). Perhaps the greatest violation of this principle is in the dissemination of the political and ideological views of COPE, as expressed in the "Political Memos from COPE" and "Notes from COPE" and "COPE Reports" (R. 417-501) which are channeled to the editors of the journals of the various appellants and then appear in the form of "canned news" stories.

We believe that it would be an unconstitutional impairment of the freedom of religion for a railroad worker, as a condition of continued employment, to be compelled to buy a recording of a sermon by Billy Graham or to attend a particular church; we believe that it similarly would be unconstitutional to compel him to buy a copy of "Das Kapital" or "Mein Kampf." We believe the compulsory subscription to appellants' periodicals and other literature is just as unconstitutional and subjects the individual appellees to attempts to force their conformity to ideologies and programs to which they are opposed.

In the *Pollak* case, the Court said (343 U. S. at 463):

"There is no substantial claim that the [streetcar] programs have been used for objectionable propaganda. There is no issue of that kind before us."

Had such issue been before the Court, we have no doubt that it would have declared Pollak's rights infringed. This issue is before this Court in this case. Appellees are as much a "captive" audience as Pollak and the other riders of the Washington transit system were.

C. The Union Shop Contract Deprives Individual Appellees Their Constitutionally-Protected Right to Work.

The right of an individual to work for a living in common occupations of the community is a constitutionally protected right. "[T]he right to hold specific private employment and to follow a chosen profession free from reasonable governmental interference comes within 'liberty' and 'property' concepts of the Fifth Amendment . . ." *Greene v. McElroy*, 360 U. S. 474, 492 (1959). The unions cannot create a dilemma in which the plaintiffs must relinquish either their beliefs or their jobs, and then argue that constitutional freedom of choice is preserved because the plaintiffs are free as Hobson to choose which constitutional guarantee to sacrifice.

In *Truax v. Raich*, 239 U. S. 33 (1915) this Court stated (239 U. S. 41):

"It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the Amendment to secure."

In *Yick Wo v. Hopkins*, 118 U. S. 356 (1886), where a municipal ordinance had discriminated against the right of a Chinese resident to pursue his occupation as laundryman, the Court stated (118 U. S. 370):

" . . . [T]he fundamental rights to life, liberty, and pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men the blessings of civilization under the reign of just and equal laws. . . . "

In *Allgeyer v. Louisiana*, 165 U. S. 578 (1897), the Court said:

" * * * [L]iberty * * * means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation; and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned."

Other cases sustaining the same proposition are:

Cummings v. Missouri, 4 Wall. 277, 321-322 (1867);

Ex Parte Garland, 4 Wall. 333 (1867);

Adams v. Tanner, 244 U. S. 590 (1917);

Meyer v. Nebraska, 262 U. S. 390 (1923);

Takahashi v. Fish and Game Commission, 334 U. S. 410 (1948); and

Barsky v. Board of Regents, 347 U. S. 442 (1954).

In *Schware v. Board of Bar Examiners*, 353 U. S. 232, 238-239 (1957), this Court said:

"A state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment . . .

A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law . . .

Obviously an applicant could not be excluded merely because he was a Republican or a Negro or a member of a particular church. Even in applying permissible standards, officers of a State cannot exclude an applicant when there is no basis for their finding

that he fails to meet these standards, or when action is invidiously discriminatory."

What "rational connection" can be found between the requirement that employees contribute to the unions' political program and their "fitness or capacity" to perform jobs for the Southern Railway System? To reject a employee on the grounds that his political beliefs are different from those of the union, and that therefore he cannot conscientiously contribute to the union's political activities as invidiously discriminatory and irrational as rejecting him because he is a "Republican or a Negro or a member of a particular church."

In *Smith v. Texas*, 233 U. S. 630 (1914), the Court held unconstitutional a Texas statute making it a crime for a person to act as a conductor of a railroad train in that state if he had not served as a conductor or brakeman on a railroad train for at least two years. In the course of the opinion the Court stated (233 U. S. 636, 638):

"In so far as a man is deprived of the right to his liberty is restricted, his capacity to earn and acquire property is lessened, and he is denied the protection which the law affords those who are permitted to work. Liberty means more than freedom from servitude, and the constitutional guaranty affords assurance that the citizen shall be protected in his right to use his powers of mind and body in any lawful calling."

.

"The liberty of contract is, of course, not unlimited, but there is no reason or authority for the proposition that conditions may be imposed by statute which would admit some who are competent and arbitrarily exclude others who are equally competent to labor on mutually satisfactory terms to employer and employee. The Court of the cases sustains the proposition that, under the power to secure the public safety, a privileged monopoly can be created and be then given a monopoly of the right to work in a special or favored position."

a statute would shut the door, without a hearing, upon many persons and classes of persons who were competent to serve, and would deprive them of the liberty to work in a calling they were qualified to fill with safety to the public and benefit to themselves."

This case clearly recognizes constitutional protection not only against destruction of the right to work, but also against the imposition of unlawful conditions upon that right. Other cases on this point are:

Slochower v. Board of Education, 350 U. S. 551 (1956);

Harrison v. St. Louis & San Francisco R.R., 232 U. S. 318, 331 (1914);

Wisconsin v. Coal Co., 241 U. S. 329, 332 (1916);

Frost & Frost Trucking Co. v. Railroad Commission, 271 U. S. 583, 592-594 (1926); and

Barron v. Burnside, 121 U. S. 186, 200 (1887).

Even in the area of employment by government, this Court has held that "Constitutional protection does extend to the public servant whose exclusion pursuant to a statute is patently arbitrary or discriminatory." *Wieman v. Updegraff*, 344 U. S. 183, 192 (1952). Surely nothing could be more arbitrary than exclusion from employment because of refusal to contribute to a political campaign or party.

These cases make it clear that Congress could not constitutionally restrict railroad employment to members of one political party, or require of them an oath to support that party. Nor can it require all non-operating employees of the Southern Railway System to contribute ten dollars a year (or any other sum) directly to the advancement of one selected party or other political agency in order to hold their jobs. A law which does that same thing by indirect direction likewise is invalid for the same reason. The evidence shows that is the way the union shop agreement under consideration here is applied by appellants. This use of that agreement is an unconstitutional application of the Union Shop Amendment.

D. The Union Shop Contract Deprives the Individual of Property Without Due Process of Law.

The effect of the union shop contract in depriving individual appellees of their property without due process of law in violation of the Due Process Clause of the Amendment is readily apparent from the foregoing discussion, and need not be elaborated.

We have demonstrated that it is the federal government which compels the minority employees to contribute to unions, and that the moneys thus exacted forcibly from the minority are employed by the unions to propagate doctrines and support political candidates with which the minority employees desire to oppose. A more patent appropriation of property from one group for the benefit of another could hardly be imagined. As this Court said in *Mr. Justice Brandeis in Thompson v. Consolidated Utilities Corporation*, 300 U. S. 55, 79-80 (1937);

“Our law reports present no more glaring example of the taking of one man’s property and giving it to another. In *Missouri Pacific Ry. Co. v. Nebraska*, 164 U. S. 403, 17 S. Ct. 130, 41 L. Ed. 103, *Missouri Pacific Ry. Co. v. Nebraska*, 217 U. S. 30, 13 S. Ct. 461, 54 L. Ed. 727, 18 Ann. Cas. 98, *Northern Ry. Co. v. Minnesota*, 238 U. S. 340, 16 S. Ct. 753, 59 L. Ed. 1337; *Great Northern Ry. Co. v. United States*, 253 U. S. 71, 40 S. Ct. 457, 64 L. Ed. 787, 10 Ann. Cas. 1335; *Delaware, Lackawanna & Western Ry. Co. v. Morristown*, 276 U. S. 182, 48 S. Ct. 276, 72 L. Ed. 103, *and Chicago, St. Paul, Minneapolis & Omaha Ry. Co. v. Holmberg*, 282 U. S. 162, 51 S. Ct. 56, 75 L. Ed. 103, expenditures directed to be made for the benefit of a private person were held invalid, although the person ordered to pay was a common carrier. In *Savings & Loan Association v. Topeka*, 20 Vt. 22, 1 L. Ed. 455, and *Cole v. LaGrange*, 113 U. S. 154, 4 S. Ct. 416, 28 L. Ed. 896, the payments ordered to be made for the benefit of a private person were declared invalid although the money was to be raised by general taxation. In *Myles Salt Co., Ltd. v. Board of Comm.*

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239 U. S. 478, 36 S. Ct. 204, 60 L. Ed. 392, the exaction was held unlawful, though imposed under the guise of an assessment for alleged betterments. Compare *Georgia Railway & Electric Co. v. Decatur*, 295 U. S. 165, 55 S. Ct. 701, 79 L. Ed. 1365. And this Court has many times warned that one person's property may not be taken for the benefit of another private person without a justifying public purpose, even though compensation be paid. See *Hairston v. Danville & Western Ry. Co.*, 208 U. S. 598, 605, 28 S. Ct. 331, 50 L. Ed. 637, 13 Ann. Cas. 1008; *Rindge Co. v. County of Los Angeles*, 262 U. S. 700, 705, 43 S. Ct. 689, 50 L. Ed. 1186. Compare *Cincinnati v. Vester*, 281 U. S. 439, 446, 449, 50 S. Ct. 360, 74 L. Ed. 950."

Here the heinousness of the exaction from individual employees for the benefit of the union's political program is compounded by the fact that such program is contrary to the views of the minority employees who are forced to pay for it.

As noted above, the unions boldly claim that they have the right to spend the moneys forcibly extracted from individual appellees in any way they see fit. Thus, in the brief tendered by the AFL-CIO as "amicus curiae", it is said (pp. 8-9):

"The right or power of a union to make political expenditures is neither derived from nor regulated by any statute or other governmental authority. . . . The appellant unions here do not rely on federal law authorizing union political activities or expenditures, because there is no such law. They rely only on the right of a private organization to run its own affairs in the best interests of its membership, absent any properly applicable governmental controls."

For reasons developed elsewhere in this brief, it is the answer for the union to say that it is merely a "private organization" if its powers derive from government. If, whether it is a private agency or a governmental or quasi-governmental agency, it seems quite clear that funds must

not be taken forcibly from minority employees political activities of the union, for in either case is being taken from these individual employees through the process of law in violation of the Bill of Rights. The union is being used to advance the private political objectives of the union leadership and of the majority which the union chooses to support. Certainly no legitimate purpose is served by the exaction of dues and their expenditure, for the government takes sides in political contests, and the interests of the majority as a whole requires *freedom* of individual political thought and action, as demonstrated above. Moreoever, if partisanship were a legitimate function of a union, the taxation of only a part of the citizenry to support it could not be justified.

It is argued by the unions that the requirement of dues to union political action is not different from membership in a state bar association. It is true that the court drew an analogy between the union shop and membership in a bar association, but the analogy was faulty in the *Hanson* case where the record contained no evidence of political activity by the unions in contravention of the rights of individual employees. Here there is clear and convincing evidence that compulsory payment of dues is being used to violate the constitutional rights of the minority employees. If it should ever develop that state unions engage in widespread political activity in contravention to the interests of their minority members, it is confident that this Court will again rise to protect the rights of the minority.

The brief tendered by the AFL-CIO mentions several labor political parties, such as the "Caucus of the Labor Party of Philadelphia" (brief, p. 16), the New York "Workingmen's Party" (brief, p. 16), the "New England Association of Farmers, Fishermen and Other Workmen" (brief, p. 17) and the "Green Party" (brief, p. 18). Could the federal government force contributions to those political parties?

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of working in the railroad industry? Can it con-
tribution to be used for the same purposes by a
constantly working in cooperation with an
political party (AFL-CIO brief, p. 25)?

The AFL-CIO further says (brief, p. 28) that
unions have been compelled to enter politics to
political programs of such organizations as the
Association of Manufacturers and the American
Association. Of course, as long as labor union
tary organizations they have the same right to
in politics. But when they use the authority of
government to compel unwilling individuals to j
dues, they have an entirely different status. D
AFL-CIO would be among the first to object if t
the federal government were used to compel a
turers and doctors to join their respective assoc
contribute to political programs which the la
abhor.

III.

**Appellants were not denied due process by
below.**

Partly in their brief (pp. 65-79, 87-100) and
Appendix to their brief, appellants have raised
objections to the procedures followed in the case.
For the most part such objections relate to ro-
dures of the type normally followed by any co-
objections of the appellants are plainly without merit.
the appellants have relegated much of the dis-
such matters to an appendix, and since the mat-
clearly do not suggest constitutional or other
problems with which this Court need be burdened,
placing our detailed analysis of such procedural
in the Appendix to this brief.

The principal procedural objection of the
challenges the propriety of the class action.
appear to be a matter exclusively for the disc-

Georgia courts, at least as long as cons of the appellants are not invaded. Moreov tional or other objections of the appellan by their stipulation (R. 166-167):

"The plaintiffs and intervening plain adequately represent for the purpose tion the interests of the employees . employees of the railroad defendants spe preceding paragraphs, . . . these bein employees or former employees of the dants affected by and opposed to the un ment who also are opposed to the use dues, fees and assessments which they and will be required to pay to support political doctrines and candidates and grams set forth in this Stipulation of

The "employees and former employees the two preceding paragraphs" are those were compelled "to become members of the union organizations" or were discharged refusal to become "members of the *labor un* (italics added).

Thus, the appellants have stipulated th plaintiffs is appropriate and is fairly and resented, and that the class consists of e sented by all of the "defendant labor union Appellants cannot properly contest these this Court in the face of their stipulation.

CONCLUSION

On the basis of the foregoing consideration that the union shop contract represents an undue exercise of governmental power to force the employees to submit to political and ideological requirements, and association with, those whose views are repugnant to them; and thus deprives the individual employee of constitutionally-protected (1) political freedom of association, (2) freedom of speech and (3) right to work; and also unconstitutional taking of their property without due process of law, therefore, the decision of the Georgia Supreme Court in this case should be affirmed.

Respectfully submitted,

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March 16, 1960

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APPENDIX

I.

Statement of the case.

A. The Union Shop Agreement.

On February 27 and April 1, 1953, the railroad company appellees,¹ collectively constituting the Southern Railway System (R. 165-166), entered into agreements with the labor union appellants² establishing a union shop with respect to the so-called non-operating employees of the Southern for whom said appellants were the statutory collective bargaining representatives. The two agreements are identical in substance. The April 1, 1953 agreement covers only one of the smaller railroad company appellees, the Carolina and Northwestern Railway, having employees represented by only four of the union appellants; the February 27, 1953

¹ The Southern Railway Company, The Cincinnati, New Orleans and Texas Pacific Railway Company, Harriman and Northeastern Railroad Company, The Alabama Great Southern Railroad Company (including Woodstock and Blocton Railway Company), New Orleans and Northeastern Railroad Company, The New Orleans Terminal Company, Georgia Southern and Florida Railway Company, St. Johns River Terminal Company, and the Carolina and Northwestern Railway Company.

² International Association of Machinists (the "I.A.M."), International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America, International Brotherhood of Blacksmiths, Drop Forgers and Helpers, Sheet Metal Workers International Association, International Brotherhood of Electrical Workers (the "IBEW"), Brotherhood Railway Carmen of America, International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (the "BRC"), Brotherhood of Maintenance of Way Employees, The Order of Railroad Telegraphers (the "ORT"), Brotherhood of Railroad Signalmen of America, National Organization Masters, Mates and Pilots, National Marine Engineers Beneficial Association (the "Marine Engineers"), American Train Dispatchers Association (the "Train Dispatchers"), and Railroad Yardmasters of America.

agreement covers all other railroad company appellants. The two agreements will hereinafter be referred to collectively as "the union shop agreement," or "the union shop contract."

The union shop agreement became effective on August 1, 1953 (R. 214), contains no termination date (R. 19) and is still in effect. It provides, in part (R. 205-206, 207):

"... all employees of the Carrier now or hereafter subject to the rules and working conditions agreed upon between the parties hereto, except as hereinafter provided, shall, as a condition of their continued employment subject to such agreements, become members of the organization party to this agreement representing their craft or class within sixty (60) calendar days after they first perform compensated service as employees after the effective date of this agreement and thereafter shall maintain membership in such organization..."

"Nothing in this agreement shall require an employee to become or to remain a member of the organization if such membership is not available to such employee on the same terms and conditions as are generally available to any other member, or if the membership of an employee is denied or terminated for any reason other than the failure of the employee to tender the proper dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership. For purposes of this agreement, dues, fees, and assessments shall be deemed to be 'uniformly required' if they are required of all employees in the same status at the same time in the same organizational unit."

The complete union shop agreement will be found at R. 205-217.

B. The Proceedings Below.

S. B. Street, employed by the New Orleans and Eastern Railroad Company as General Clerk, and

other non-operating employees of the railroad company appellees, brought this action in the Superior Court of Bibb County, Georgia, on June 5, 1953—nine days before the deadline for acquiring membership under the union shop agreement—against appellants and the railroad appellees seeking (R. 13-14): (1) an injunction against the enforcement of the union shop agreement; and (2) a declaration that the union shop agreement is illegal, void and unconstitutional. An order was that day granted by the court restraining appellants and the railroad appellees “from discharging any employee for the sole reason that such employee does not have or maintain membership in any of the organizations named as defendants in this petition” (Tr. 33).

On June 12, 1953, Miss Nancy M. Looper, Miss Hazel Cobb, Mrs. Elizabeth Ferguson, Mrs. Edna G. Fritsch, J. H. Davis, and twelve others filed a petition for leave to intervene in the above proceeding (R. 14-16), which petition was that day granted and petitioners made parties plaintiff (R. 17).

The labor union appellants (but not the individual appellants) filed a petition for removal of the action to the United States Court for the Middle District of Georgia on June 25, 1953 (R. 31-38); motions to remand were filed by the railroad appellees (R. 47-51), the original petitioners (R. 51-54), and by the intervenors (R. 55-57). Three and half years later, on January 7, 1957, the District Court entered an order, consented to by counsel for union appellants, remanding the case to the Superior Court of Bibb County, Georgia (R. 57-58).

Prior to that date, the petition had been twice amended (R. 17-20, 21-31), and the railroad company appellees had (on June 29, 1953) filed their answer in the state court (R. 39-47).

Following remand, the labor union appellants, on January 10, 1957, filed a motion to dismiss the petition for failure to state a cause of action (R. 219). Hearing before Judge Oscar L. Long, of the Superior Court of Bibb County, w

held on January 29, 1957, on which date the third ment to the petition was tendered, allowed and filed (R. 58-60, 219). Treating the appellant unions to dismiss as directed to the complaint as so a Judge Long sustained their motion, dismissed the (R. 221) and dissolved the restraining order. Th of dismissal was appealed to the Supreme Court of and supersedeas was allowed as to the appellant em filing a supersedeas bond (R. 60-61). That court 10, 1957, reversed Judge Long. *Looper et al. v. Southern and Florida Railway*, 213 Ga. 279, 99 S. E. The remittitur of the Supreme Court of Georgia ceived by Bibb Superior Court on July 18, 1957 and the judgment of that court on July 22, 1957 (R. 2 the latter date, the appellants for the first time t an answer to the petition (the law requires the filin answer within thirty days from date of service— Code Section 81-201) accompanied by a special mo requesting its allowance, and the court, on that date, and ordered the answer filed, subject to objection b parties, who were required to show cause on August why said motion should not be granted (Tr. 123 plaintiffs in the trial court (including, of course, t vidual appellees here) objected to the allowance tardy answer, and on February 18, 1958, Judge Lon that he would sustain the objections but such an or never signed (R. 221).

During the first half of 1958, counsel for the p in the trial court took the depositions of numerous of local lodges of the labor union appellants (R. 1 scheduled the depositions of numerous national of those appellants, and of organizations related to t 157-161); and served comprehensive requests for sions upon the appellants (R. 314). At a pre-trial ence on May 8, 1958, a comprehensive order for pr of Books and Records was signed by Judge Long (R. On May 22, 1958, the appellants filed a Plea of Res.

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(R. 67) and, on May 30, 1958, filed a petition for an order suspending the court's order requiring the production of books and records and for suspension of the taking of testimony by plaintiffs on the merits until the Plea of *Res Judicata* could be inquired into (R. 66-69), the petition being denied that day (R. 69-70).

On August 14, 1958, a comprehensive stipulation was entered into by all parties (R. 152-217).

A further pre-trial conference was held before Judge Long on September 23, 1958, at which time: (1) the stipulation referred to above was presented to the court, which accepted the stipulation, approved the procedures therein contained for the introduction of additional evidence, agreed, as requested by all parties, to try the case with a jury, and scheduled trial for the week beginning November 10, 1958; (2) the appellants requested permission to withdraw their plea of *Res Judicata*, which withdrawal was approved by the court; (3) the individual appellees requested, and were granted, permission to withdraw their objections to the allowance of the appellants' answer; (4) individual appellees tendered and served the fourth amendment to the petition, which was allowed and ordered filed, subject to objections and demurrers (R. 98-101). The appellants filed objections to certain portions of the fourth amendment to the petition (R. 85-89), which objections were overruled on the first day of trial (R. 89), and filed an answer to that amendment (R. 89-97).

As finally amended, the petition, in addition to the injunctive and declaratory relief mentioned above, sought a return of dues, fees and assessments paid by individual appellees and the class they represent to the union appellants under the compulsion of the union's agreement (R. 83-84), the restraining order having been dissolved as set forth above. The individual appellees included some of whom were intervening plaintiffs originally, and all named as petitioners (R. 71).

The case was tried before Judge Long November 10 and November 20-21, 1958, without a jury, the first day

days being devoted to the introduction of evidence and the other two to argument.

On December 8, 1958, Judge Long signed the Conclusions, Order, Judgment and Decree which is before this Court. The case was appealed to the Supreme Court of Georgia, the judgment of the trial court. *International of Machinists et al. v. Street et al.*, 215 Ga. 2d 796 (1959). That decision of the Georgia Supreme Court is before this Court for review (R. 249-270).

C. The Evidentiary Record.

The evidentiary record in this case consists of:

- (1) The Stipulation of Facts (R. 165-217);
- (2) The testimony of A. E. Lyon, Executive Treasurer of the Railway Labor Executive Association (sometimes referred to herein as "RLEA");
- (3) The testimony of Cyrus T. Anderson, Executive Treasurer of Railway Labor's Political League (sometimes referred to herein as "RLPL"), and the Chairman of RLEA (R. 110-114);
- (4) The testimony of John T. O'Brien, Executive Secretary of the Non-Partisan Political League of the Railway Laborers (sometimes herein referred to as the "MNPL");
- (5) The testimony of Harold Jack, Communications Director of the American Federation of Labor and Congresses of Women (the "AFL-CIO") (R. 121-124);
- (6) The testimony of Andrew J. Biemiller, Assistant Secretary of the Department of Legislation of the AFL-CIO (R. 131);
- (7) The testimony of James L. McDevitt, Executive Director of the Committee on Political Education of the AFL-CIO (sometimes herein referred to as "COPE").

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of the AFL-CIO
E") (R. 131-152);

(8) Plaintiffs' First and Substituted Second Admissions and the union appellants' response (R. 277-323);

(All of the above is included in the printed Record; what follows is evidence in the original but has not been printed for the reason given in note on page 1 of this brief.)

(9) Plaintiffs' Substituted Third Request for Admissions and the union appellants' response thereto (R. 324-1075);

(10) 588 other documentary exhibits introduced by appellants and individual appellees (Tr. 37-38). Actually all of these exhibits are documents published by appellant unions and their affiliates concerning the case. This was stipulated (R. 198):

"The documents listed below are official records of the labor union defendants or other organizations indicated below, and such documents were furnished to the organizations indicated in the record by the organizations indicated in the record. The cost of publication and the cost of distribution was paid for out of the general dues fund of the organization listed, and copies thereof have been made and are kept and maintained by said organizations as a regular course of their business."

(11) Additional items read into the record by the court with the consent (Tr. 242-286).

D. The Evidence.

1. The Parties.

The railroad appellees operate lines of railroad in Georgia, Florida, North and South Carolina, Tennessee, Kentucky, Ohio, Indiana, Illinois, Alabama, Mississippi, Louisiana and the District of Columbia; each is a carrier by railroad subject to the Interstate Commerce Act (24 Stat. 379, 49 U. S. C. 1-10).

is a "carrier" as defined in the Railway Stat. 577, 49 U. S. C. 151 *et seq.*) (R. 198)

The union appellants are the collective representatives for all the various crafts or operating employees on the Southern (R. 198). The only such representatives (R. 198).

The class represented by the individual of "all those employees or former employees defendants affected by and opposed to agreement who are also opposed to the dues, fees and assessments which they have will be required to pay to support ideological doctrines and candidates and legislative purposes for other purposes other than [collective] (R. 167). Each was notified by the union the railroad employers that he must become the union appellant representing his craft dismissed from employment (R. 167).

It is stipulated (R. 188):

"The plaintiffs, intervening plaintiffs they represent have been and are opposed of their money by the labor union through the Railway Labor Executives' Association, the Political League, Machinists Non-Partisan League, the American Federation of Congress of Industrial Organizations, and the National Political Education of the AFL-CIO have been, are and will be required to pay dues and assessments for the endorsement and legislation, ideologies and political candidates for public office which have been and will be supported and endorsed by the labor union, Railway Labor Executives' Association, the Political League, Machinists Non-Partisan League, the American Federation of Congress of Industrial Organizations and the National Political Education of the AFL-CIO. It is stipulated in this Stipulation of Facts, or for any other than the negotiation, maintenance

way Labor Act (49 U.S.C. 169-171) and are

representative bargaining representative of the employees of the railroad to the union shop use of the periodic have been, are and logical and political programs . . . or collective bargaining]" union appellants and become a member of craft or class or be

plaintiffs, and the class opposed to the use of the railroad in defendants, Railroad Laborers' Union, Railway Laborers' Non-Partisan Political Association of Labor and Congressmen and the Committee for the CIO which they have paid in dues, fees and support of the labor union defense fund doctrines and can have been, are and will be labor union defense fund Association, Railroad Laborers' Non-Partisan Political Association of Labor and Congressmen, or the Committee for the CIO as set forth for other purposes and administration

tration of agreements concerning rates of and working conditions, or wages, hours, other conditions of employment, or the disputes relating to the above."

2. The Mechanism by Which Dues, Fees and Assessments Paid by the Individual Appellees Are Channelled into Political and Economic Uses.

Appellee J. H. Davis was required as a condition of continued employment, against his wishes and over his objection, in March, 1957 (following the dissolution of the restraining order) to join the Brotherhood of Railroad Steamship Clerks, Freight Handlers, Express and Messenger Employees and to pay a reinstatement fee and dues in the amount of \$96.00, and dues of \$2.25 per month from March, 1957 through June, 1958, and \$3.00 per month from June, 1958 (R. 203).

Appellee Hazel E. Cobb was required to join the union in April, 1957 and pay an initiation fee and back dues, also to continue paying dues at the rates set forth above (R. 203-204).

Appellee S. B. Street was required to join the union in April, 1957, and pay to it a reinstatement fee and back dues, and to continue paying dues at the rates set forth above (R. 204).

Absent the supersedeas order and bond requiring similar payments would have been required of the named appellees (R. 202-203, 205). The initiation fees and dues required by other unions of their members, including individuals, are set out at R. 171-175.

Such dues, fees and assessments generally are transmitted to a local lodge of the union appellant (Tr. 910-916).

The local lodge generally retains a portion of the dues and transmits the remainder to the national (international) lodge or perhaps some to a district or system (Tr. 177; Tr. 910-916).

Each of the appellant unions is an affiliate of the AFL-CIO, a national federation of labor organizations, and pays to it a per capita tax amounting to 5¢ per member per month, such payments being made from the appellants' general funds, derived and maintained from periodic dues, fees and assessments paid by appellants' members (R. 177, 178, 317-318, 322). A part of the moneys so paid to the AFL-CIO is used to support the activities of the AFL-CIO Committee on Political Education and the AFL-CIO Department of Legislation (R. 126, 135-152, 319, 323).

All of the appellants, through their chief executive officers, are members of the Railway Labor Executives' Association, an unincorporated association and labor organization whose chief activity is in the field of federal legislation (R. 179). RLEA is financed by assessments upon appellants (and other unions affiliated therewith) paid from appellants' general dues funds derived and maintained from periodic dues, fees, and assessments paid by their members (R. 177, 180-181).

Railway Labor's Political League is an organization also composed of appellants' chief executive officers (and the chief executive officers of certain other labor organizations), they being automatically entitled to membership in that organization by virtue of their official positions with appellants (R. 182). RLPL is substantially supported by contributions from RLEA which, as noted above, gets its financial support from appellants' general dues funds (R. 183-184).

The Machinists' Non-Partisan Political League is an organization under the complete control of officials of the International Association of Machinists and is largely supported by direct grants from that appellant (R. 193-195).

"LABOR" is a weekly newspaper published by Railway Labor's Cooperative and Educational Publishing Society, of which all appellants (except the Masters, Mates and Pilots and the Marine Engineers) are part owners, and is supported principally by subscriptions which the general funds of all appellants (except the Train Dispatchers) are used to purchase (R. 189).

Railway Labor's Political League, the Machinists' Non-Partisan Political League and the AFL-CIO Committee on Political Education all make direct financial contributions to candidates for public office (R. 151, 182, 186-187, 196-197, 277-316). However, they contend that any such contributions to candidates for Federal office are from funds "voluntarily" contributed by individual members of appellants, not from moneys received by appellants from their members as dues, fees or assessments. They admit that they use dues moneys to pay for their general overhead and "political education" activities (as well as for actual contributions to state and local candidates) so that virtually the entirety of so-called "voluntary" contributions may be channeled to federal candidates supported (R. 135-150, 182-183, 184-186, 193, 194-195). Thus the "overhead" is as effectively used for political purposes as the "voluntary" fund.

Although there is some variation among the appellants in the precise routing of an employee's dues into political and ideological activities, such variations are of no particular significance here. In *every* instance money paid by the individual appellees is being used for political and ideological purposes by each appellant itself and by RLPL, MNPL, COPE, "LABOR," RLEA and the AFL-CIO Department of Legislation.

3. *The Evidence of Record Shows That the Labor Union Appellants Use Money Exacted From the Individual Appellees Under the Union Shop Agreement for Political and Ideological Purposes.*

Railway Labor's Political League.

The operation of RLPL is described in the stipulation as follows (R. 182-183):

"Railway Labor's Political League was formed for the specific purpose of engaging in political activities dealing with the election of candidates to public office. The organization maintains two funds—one the so-called 'educational' fund and the other the so-called

'free' fund. Railway Labor's Political League received, receives and will receive direct grants into its 'educational' fund from the general funds of the union defendants and from the Railway Labor Executives Association. The monies in the 'educational' fund are used, except in Wisconsin, New Hampshire, Pennsylvania, Indiana, Texas and Iowa, to support candidates for public office at the State and local level; for publicity to support candidates on the national as well as the State and local level; for administrative expense to operate Railway Labor's Political League generally (including the salaries of the paid employees of the organization, office expense, supplies, etc.) and for miscellaneous activities in supporting candidates (whom plaintiffs, intervening plaintiffs, and the class they represent oppose) at the national, State or local level, such as transportation of voters to and from the polls, preparation and distribution of voting records, preparation and distribution of sample ballots, and the preparation and distribution of various types of political literature soliciting or influencing support for candidates for political office on the national, State and local levels.

"The administration, operation and maintenance of the 'free' fund activities of Railway Labor's Political League has been, is and will be financed and supported by direct expenditures from the 'educational' fund of Railway Labor's Political League derived from the general dues funds of the labor union defendants."

RLPL's "free" fund is used for direct contributions to the campaigns of Presidential, Vice Presidential, Congressional and U. S. Senatorial candidates (R. 184). Such expenditures for the two election years 1954 and 1956 are set out in the First Request for Admissions (paragraph (c)) and the appellants' unions' response thereto, and the Substitute Third Request for Admissions (paragraph 1) and the appellants' unions' response thereto (R. 306-314, 316; Tr. 1056, 1058, 1073). Those contributions by Railway Labor's Political League during the 1954 and 1956 national political campaigns may be summarized as follows (R. 186-187):

In 1956, RLPL contributed substantial financial support to the national committee of one major national political party, and not to the other.

In 1954, RLPL contributed substantial financial support to the national committee of the same major national political party, and not the other.

In 1956, RLPL contributed substantial financial support to eight U. S. Senatorial candidates of the same major political party and to no U. S. Senatorial candidates from the other major political party.

In 1954, RLPL contributed substantial financial support to thirteen U. S. Senatorial candidates of the same major political party and to no U. S. Senatorial candidates of the other major political party.

In 1956, RLPL contributed substantial financial support to sixty-four Congressional candidates of the same major political party and to four Congressional candidates of the other major political party.

In 1954, RLPL contributed substantial financial support to fifty-six Congressional candidates of the same major political party and to six Congressional candidates of the other major political party.

In 1956, RLPL contributed substantial financial support to three gubernatorial candidates of the same major political party and to no gubernatorial candidates of the other major political party.

In 1954, RLPL contributed substantial financial support to two gubernatorial candidates of the same major political party and to no gubernatorial candidates of the other major political party.

Theoretically, contributions to the "free" fund of Railway Labor's Political League are the voluntary acts of individual members of the labor union appellants. However, collections to that "free" fund actually are made by officers or shop stewards of the appellant unions and transmitted to RLPL through persons who, although designated as "deputy treasurers" of RLPL, in fact are the chief financial officers of the labor unions or, in two instances, are editors

of their periodicals (R. 184-186). Most appellant unions donate space in their periodicals for the purpose of inducing their members to contribute to RLPL's free fund, and the efforts of a substantial number of their executive personnel at the national and local levels also are spent in urging contributions to the free fund of RLPL (R. 185).

The evidence shows that the "endorsement" of candidates by the Railway Labor's Political League is not a matter of the choice of that candidate by the ordinary members of the various unions "affiliated" with, and supporting financially, RLPL. On the contrary that organization has only 22 members (R. 182). Its endorsement procedure has been described as follows (Tr. 934, p. R-152):

"The voting records and attitudes on public issues of all the members of the House and Senate are carefully scrutinized by the Advisory Committee to the Railway Labor's Political League. This Committee is composed of the National Legislative Representatives of the railway labor organizations who are located in Washington, D. C. This Advisory Committee to the League meets on a great many occasions before primaries and general elections to make recommendations to the League of candidates whose records are such that they can be endorsed. The members of the League, who are the chief executives of the standard railroad labor organizations [the 22 men mentioned above] are then in a position to endorse the candidates whose records show that they have acted in the interests of the people."

The individual appellees, and the class they represent, are given no opportunity to participate in the determination of the political programs and activities of RLPL; their views thereon have not been sought; they have not ratified, or acquiesced in, such activities and programs (R. 198). B

¹ The International Association of Machinists, of course, "plus" the MNPL; the other two exceptions are the Masters, Mates and Pilots, and the Marine Engineers (R. 185).

when an RLPL endorsement is publicized, it does not mention that it is an endorsement by only 22 men at the most. It says (See Tr. 567, p. 1, Columns 6 and 8, for example—this is the 1956 special edition of "LABOR" supporting Mayor Joseph Clark for U. S. Senator from Pennsylvania):

"The senatorial candidate for whom this special edition has been issued is supported not only by Railway Labor's Political League, *speaking for nearly all rail unions . . .*"

"The Standard Railroad Labor Organizations have endorsed . . . They do not make such endorsements lightly."

"A. E. Lyon . . . chairman of Railway Labor's Political League, *which speaks for 21 rail unions having 1,500,000 members, . . .*"

"Turn out at the polls on November 6, Pennsylvania voters, *Railworkers' Spokesman Lyon pleads*" (italics added).

In the New York special edition of "LABOR" in 1956 supporting Mayor Wagner, it is stated (Tr. 568, p. 2, col. 3):

"Just as important as the election of Bob Wagner to the Senate is the caliber of men who'll represent New York in the U. S. House. Fortunately, in many districts able, conscientious fighters for the people are presenting themselves in the House races this year.

"*These are the men endorsed by Standard Railroad Labor Organizations, through Railway Labor's Political League*" (italics added).

The Machinists' Non-Partisan Political League.

The Machinists' Non-Partisan Political League, the political organ of the International Association of Machinists, was formed by that union for the specific purpose of engaging in "political and educational" activities dealing with

the election of candidates to public office (R. 192). Activities are under the direction and control of officers and employees of IAM (R. 193).

MNPL employs an expert political consultant and pays him a retainer fee of \$12,000 a year plus expenses, which, plus the salaries of the consultant's secretaries, is paid out of the general funds of the IAM (R. 193).

The general dues funds of IAM are contributed to the so-called "educational" fund of MNPL in substantial amounts, and that fund receives contributions also from the local and district lodges of IAM (R. 195). Contributions into the so-called "educational" fund of MNPL have been made as follows (R. 195):

Source of Contribution	July-Dec. 1953	1954	1955	1956	1957
International Headquarters, IAM	\$5,000 ¹	\$10,000	\$10,000	\$10,000	\$10,000
District and Local Lodges, IAM	\$ 102 ¹	\$33,976	\$27,496	\$44,019	\$41,112

¹ Yearly totals divided by two.

Each of the above contributions was made from general dues funds (R. 195).

Collections for the "general" fund of MNPL, from voluntary direct contributions to the campaigns of presidential, vice-presidential, congressional and senatorial candidates, made, are by officers of MNPL who frequently are also officers of IAM (R. 195).

The administration, operation and maintenance of the "general" fund activities of MNPL are financed and supported by direct expenditures from the "educational" fund of MNPL derived from the dues paid by individual applicants and other union members (R. 192-193).

The "educational" fund of MNPL is also used for contributions to, and otherwise to support, candidates for public office at the state and local level except where prohibited.

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by state law; for publicity to support candidates on national as well as the state and local level; for administrative expenses to operate MNPL generally (including salaries of the paid employees of that organization, of expense, supplies, etc.); and for activities in support of candidates, such as the preparation and distribution of voting records, and the preparation and distribution of various types of political literature directed toward soliciting and influencing support for candidates for political office on the national, state and local levels (R. 192).

In 1954, MNPL contributed substantial financial support to the national committee of one major political party, and not the other (R. 196).

In 1956 MNPL contributed substantial financial support to the national committee of the same major political party and not to the other (R. 196);

In 1954, MNPL contributed substantial financial support to seventeen U. S. Senatorial candidates of the same political party and to none of the candidates of the other major political party (R. 196);

In 1956 MNPL contributed substantial financial support to fifteen U. S. Senatorial candidates of the same major political party and to none of the candidates of the other major political party (R. 196);

In 1954 MNPL contributed substantial financial support to forty-one Congressional candidates of the same major political party and to none of the Congressional candidates of the other major political party (R. 197);

In 1956 MNPL contributed substantial financial support to seventy-eight Congressional candidates of the same major political party and to none of the Congressional candidates of the other major political party (R. 197);

In 1954 MNPL contributed substantial financial support to two gubernatorial candidates of the same major political party and to none of the gubernatorial candidates of the other major political party (R. 197);

In 1956 MNPL contributed substantial financial support to three gubernatorial candidates of the same major political party (R. 197);

cal party and to none of the gubernatorial candidates of any other major political party (R. 197).

The major political party receiving the financial assistance in each instance set forth above was the same (R. 198).

The AFL-CIO Committee on Political Education.

The Committee on Political Education is the political arm of the AFL-CIO (R. 151). It is a headquarters committee of the AFL-CIO and an integral part of that organization (R. 122). Mr. James L. McDevitt is its Director (R. 132).

The activities of COPE are supported in three ways (R. 135-137): (1) by so-called "voluntary" individual contributions to COPE's Individual Contributions Fund (referred to as "ICF"), (2) by contributions from union organizations affiliated with the AFL-CIO to a fund known as COPE's "Educational Fund", and (3) by the direct assumption of COPE's obligations by the AFL-CIO itself.¹

The AFL-CIO assumed the expenses of COPE from December 5, 1955 through June 30, 1958, the most recent period for which information is of record, as follows (R. 138):

Expense Item	Dec. 5, 1955- June 30, 1956	July 1, 1956- June 30, 1957	July 1, 1957- June 30, 1958
Salaries	\$207,682.65	\$201,162.85	\$35,412.10
Travel Expenses	73,614.36	64,388.74	11,225.61
Printing	41,283.21	54,407.16	10,876.54
Postage	6,650.01	19,286.47	1,111.11
Supplies	2,207.69	2,424.46	1,111.11
Subscriptions	2,080.78	2,076.10	1,111.11
Rent	4,170.18		
Field Offices	3,783.71	6,683.62	
Matching Funds			
Other Expenses	10,899.59	15,292.64	1,111.11
TOTALS	\$352,372.18	\$365,722.04	\$55,826.58

¹ The AFL-CIO Executive Council states that the "functions of the COPE are carried out on a year-round basis and are paid for by per-capita and/or treasury funds" (R. 139).

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 ial support
 R. 197).

COPE has received direct contributions into its educational fund from labor unions affiliated with the AFL-CIO as follows (R. 137):

February 1, 1956-June 30, 1956	\$ 86,763.41
July 1, 1956-June 30, 1957	263,305.75
July 1, 1957-June 30, 1958	320,907.46

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During the period December 5, 1955 through June 30, 1956, receipts into COPE's ICF were \$80,314.67; for the period July 1, 1956 through June 30, 1957, such receipts were \$542,259.79; from July 1, 1957 through June 30, 1958, receipts by the ICF were \$346,825.50 (R. 141).

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The Executive Council of the AFL-CIO (of which several of the chief executives of the labor union appellants are members (R. 132; Tr. 393, p. ii)) gives the following account of COPE and its activities:

E from De-
 recent date
 R. 135-137):

July 1, 1957-
 June 30, 1958

"The Committee on Political Education was formed on December 5, 1955 through the merger of Labor League for Political Education, the political arm of the former AFL, and the Political Action Committee of the former CIO. It began operations under the co-directorship of James L. McDevitt, former LLP director, and Jack Kroll, former PAC director" (Tr. 393, p. 311).

* * *

"In 1956 more than 30,360,000 pieces of literature were printed and distributed, including a 256 page basic handbook on political organization [Plaintiffs' Exhibit 15 "How to Win"; Tr. 416], and a speaker's handbook consisting of 374 pages [Plaintiffs' Exhibit 101; Tr. 502]. A semi-monthly newsletter, which is not on a subscription basis, was instituted. During the campaign period other materials were produced together with a special publication directed to the attention of minority groups.

"A voting record by states, recording over 20,600 votes cast by members of Congress from 1947 through 1956, was published and 10,210,525 of these individual voting records [Plaintiffs' Exhibits 13 and 14; Tr. 41

the "education
 and basis and
 (Tr. 929).

\$331,007.39
 121,379.16
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 5,723.38
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10,977.24
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415] were distributed through the s
and industrial union councils" (Tr. 3

* * * * *

"Endorsement of Stevenson, Kefauver.

"Acting upon this report [by COPE recommendations of the AFL-CIO Executive Board of the General Board of the AFL-CIO of 1956, in Chicago, Illinois, endorsed the Adlai Stevenson and Estes Kefauver for Vice President of the United States.

"In order to implement this end Committee on Political Education started immediately to integrate the presidential the senatorial, congressional and state which it was already involved" (Tr.

* * * * *

"COPE in the 1956 Election.

"Your COPE prepared and distributed a detailed comparison of the Republican platforms . . . It assisted the candidates in arranging meetings with of our organizations. It prepared and literature for our members outlining in the records of the presidential and vice candidates. It assisted the committees candidates in the preparation and distribution of campaign literature and it worked closely with the Advisory Committee of the endorsed candidates (Tr. 393, p. 108).

COPE's direct contributions from ICF for general candidates during the campaigns of 1956 at R. 277-299, 315.

During the 1956 presidential campaign, the general board of the AFL-CIO endorsed the vice presidential candidates of one of the parties, and the COPE organization acted for those candidates, financial contributions in

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393, pp. 312-313).

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PE] and upon the
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\$56,500.00 were made to the campaigns of t
dates out of COPE's ICF (R. 143). Many e
COPE worked actively on behalf of those can
attempted to secure as large a vote for those
as possible among the members of the labor u
ated with the AFL-CIO and their families, f
neighbors (R. 143).

In 1956 COPE contributed financial support
U. S. Senatorial candidates of the same maj
party and made no such contribution to any sen
didates of the other party; in 1956 COPE
financial support to one hundred twenty-five
for Congress of the same major political pa
only two candidates for Congress of the oth
party; in 1956 COPE contributed financial
seven gubernatorial candidates of the same maj
party and gave no financial support of any s
gubernatorial candidate of the other major pol
(R. 151).

The foregoing contributions were made pre
in favor of the candidates of one major polit
including the presidential and vice presidential
of that major political party (R. 197, 278-299).
shows that the class represented by the individ
lees includes members of both political partic
The great preponderance of the contributions a
by the other political organizations of the l
appellants; and of their various publications, in
newspaper "LABOR," has been in favor of the
of the same major political party to which COPE
bulk of its support (R. 197).

The Committee on Political Education occ
thirds of the sixth floor of the AFL-CIO building
but pays no rent on its quarters even duri
periods (R. 142). It enjoys a "free ride" on
at the expense of the unions who are financed t
compulsory dues, fees and assessments paid
members.

COPE's voting records (Tr. 414, 415) election political documents. They were paid for "educational fund" (R. 144). Examination records will show that the "score" congressman depended upon whether he sided on proposed legislation. Over ten million individual state voting records were distributed to members (R. 144-145).

The booklet "How to Win" (Tr. 416) is a manual on practical politics for the education of union officials and was published and distributed from general funds of the AFL-CIO and the "educational fund" of COPE (146-147).

The record contains a series of "Political Memos" (Tr. 417-469) which were published and distributed with AFL-CIO funds, 84,000 copies being distributed to the unions affiliated with the CIO (R. 147-148).

This Court is urgently requested to examine copies of these Political Memos. They are political propaganda and even vituperation.

For example, they refer to the candidates endorsed by COPE as "forward-looking candidates" (Tr. 431) who "upholds labor's right" (Tr. 432); as "the help of thousands of trade unionists" (Tr. 446), or who "brings a fresh liberalism with him" (Tr. 446), or who "brings a fresh liberalism with him" (Tr. 446).

A candidate not endorsed by COPE, of whose views COPE disapproves, one who "flies backwards" (Tr. 418); uses a "huckster line" (Tr. 418); or is trying to "throw sand in the eyes of the people" (Tr. 419); "has a harder time of it than any politician in the country" (Tr. 420); "member of . . . Republican machine" (Tr. 421); that "anything that helps take money from the taxpayer and put it into the pockets of the industry is okay" (Tr. 433); belongs to the "sumner . . . bloc" (Tr. 434); "spout[s] e"

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the "soak-the-con-
eloquently about

states' rights" (Tr. 438); is one of the "enemies"
(Tr. 439); "takes pride in opposing appropri-
foreign aid" (Tr. 445); and "would love to put t
in leg irons" (Tr. 464). As has been pointed ou
rial in these Political Memos is reproduced by
lants in their official journals for dissemination
members.

"COPE Reports" (Tr. 481-501) are simply
leases prepared by COPE for distribution to
and other affiliates of the AFL-CIO, and their
and distribution is financed by dues paid by
appellees and other union members (R. 148-149).

COPE's overall objectives are apparent from t
Report" for January 1957 (Tr. 481, pp. 3-4):¹

"It is not true that there were substan-
from Stevenson to Eisenhower in the so-c
wards of the big cities. Preliminary che
voting pattern in these wards indicates a sn
in the vote for Stevenson, but no correspo
crease in the vote for Eisenhower. In ot
there was some withholding of ballots.

"There was a heavier shift in some of
wards, but not in those which are effectively
either politically or in unions. The heavies
were in the South where Negro voters ar
against the guns of the Dixiecrats. The
change, or only a slight one, in cities like P
where labor organization is excellent, and i
sible to explain the issues fully to the p
directly affected.

"Adding It All Up"

"So where do we come out? The returns
clearly, it seems to us, that labor's politica
tions, spearheaded by the AFL-CIO Con
Political Education (COPE), proves out h

¹ The "COPE Report" containing the material here
produced verbatim in the January 1957 "Firemen
Journal" (Tr. 417).

We could have been swept off our feet in Congress had we not been organized. Our people might have stayed home in droves in the Presidential race except for our register-and-vote campaigns. There might have been a truly disastrous swing in the Negro vote if labor had not been on the job explaining the real issues.

"It looks as if the big city political machines have broken down in most places, and that labor political organization is rapidly taking their place. It certainly looks as if the "Solid South" is smashed beyond repair, and that people will be listening to liberal appeals and not to the voice of tradition. All of these things are good from labor's point of view, and if we keep on building up an effective political organization, we can push events farther in the liberal labor direction.

"So we get back to our knitting. We get back to the *registration* drive, which will start again soon, and must be made even more effective on a year-round basis with permanent Good Citizenship Committees as AFL-CIO President George Meany has suggested. We get back to *educational* work explaining the votes and issues. We get back to the *dollar drive*, which provides the wherewithal. And we get back to *getting out the vote* in the show-down—in 1957 it is the local elections and a few statewide races, all very important for good local and state government, and for building up liberal political strength."

The "COPE Report" for June 1957 states (Tr. 486):

"WHAT IS A JUDGE TO US?"

"Ever hear of a labor injunction? Our people walking the bricks carrying placards, handing out leaflets at the plant gates. Judge hands down the injunction for the Company, clearing the streets. The scabs go through, your job is done.

"That used to be standard. With Taft-Hartley on the books, in case of bad times, it could get to be standard again: *That puts it up to the judges. Fortunately, a good many of them are elected. To elect good judges our people must vote. To vote they must.*

register. This is a job for all year round" (*italics added*).

Thus, it can be seen that COPE would make the willingness or unwillingness of a candidate for judge to approve mass picketing in labor disputes a political issue. This is politics of the rankest sort.

Another of COPE's publications is entitled "Notes From COPE" (Tr. 470-480). Basically, "Notes From COPE" is intended to support the AFL-CIO's effort to identify the political interests of racial minorities with its own political objectives. "Notes From COPE" is published and distributed with AFL-CIO general dues funds (R. 148).

In addition to these publications of its own, COPE's propaganda is regularly published in "AMERICAN FEDERATIONIST", the monthly official publication of the AFL-CIO (R. 124-125). Most issues of "AMERICAN FEDERATIONIST" (Tr. 797-869) contain at least one article by the director of COPE, or a member of his staff, as well as numerous other articles and editorials dealing with the AFL-CIO's ideological, political and legislative objectives.

The Committee on Political Education is active on the state level as well as at the national level. COPE's director says that COPEs have been organized "in every city and certainly every state of the Union. We are now down to the township and borough level . . ." (Tr. 280).

In general, the state COPEs carry on the same activities at the state and local level as the national COPE does at the federal level (R. 140).

The state COPE is financed in the same manner as the national COPE (R. 139) with one notable exception. The state COPE frequently levies a direct per capita tax upon the members of all the local unions affiliated with the state AFL-CIO; this procedure is contained in the proposed by-laws for state COPEs recommended by the national COPE (R. 139-140), and is in effect in Arizona, Delaware, Maryland, Missouri, Montana, Oklahoma, Virginia, and possibly other states (R. 140).

"LABOR."

"LABOR's" masthead states that it is the "official Washington weekly newspaper" of its labor union owners and that "it is not conducted for profit and does not accept paid advertising of any kind" (e.g. Tr. 508). The masthead also states that "LABOR's" "editorial policy is determined by a committee selected annually by the chief executives of the 'associated organizations.'"

Free space in "LABOR" has been, is, and will be used to induce contributions to the funds of Railway Labor's Political League and of the AFL-CIO Committee on Political Education (R. 189). Substantial portions of each issue of "LABOR" are devoted to legislative subjects, and during election periods, to political subjects dealing with the election of candidates to public office (R. 189). The reporting in the newspaper "LABOR", including the news columns thereof, is non-objective and is designed to influence the readers of "LABOR" toward the particular political philosophy espoused by that publication (R. 189-190).

The legislative members of one major political party are mentioned favorably in the columns of "LABOR" far more often than are the legislative members of the other major political party (R. 190).

During the general election campaigns of 1956, "LABOR" published seventeen special editions featuring eighteen candidates for the Congress of the United States (Tr. 551-553, 555-560, 562-568). These special editions were published without cost to the candidates involved (R. 190). "LABOR" published and distributed 727,000 copies of these issues and of these, less than one-half went to "LABOR's" regular subscribers in the states in which such candidates were running (in lieu of the regular editions of "LABOR" for the date involved), while more than one-half were distributed to members of the labor union defendants who did not subscribe to "LABOR", as well as to members of the general public (R. 190). The special editions referred to above with a single exception, supported the members of the same major political party.

It was stipulated that similar "special editions" were being prepared for the 1958 general election campaigns at the time the stipulation was executed on August 14, 1958 (R. 190-191).

Examination of the positions taken by the newspaper "LABOR" on legislative issues demonstrates that it supports the same legislative and economic objectives which are supported by the AFL-CIO and its Department of Legislation as typified in "Labor Looks at the 85th Congress" (see pp. 30a-31a, below).

Virtually every column and every story of every issue of "LABOR" "plugs" its ideological "line" either openly or subtly. Even a casual reading of a few issues of this newspaper will convince one that it is not designed for the dissemination of news, but is purely and simply a propaganda organ (R. 189-190).

The political purpose of "LABOR" is frankly admitted. The editor, Reuben Levin, states (Tr. 278):

"LABOR is now the most widely circulated and most influential weekly paper of its kind on this continent, with a circulation of approximately 850,000 a week. It has also played a mighty role in many election campaigns, and it will undoubtedly do the same this year."

The Railway Labor Executives' Association.

The Railway Labor Executives' Association had its genesis in a committee organized to support a "very thorough and comprehensive plan for the operation of the railroads under government control . . . known as 'The Plumb Plan of Government Ownership and Operation of the Railroads.'" That committee in 1926 became the RLEA (Tr. 716, p. 6).

A principal activity of the RLEA is in the field of federal legislation. RLEA, as an organization acting through its Chairman, Secretary-Treasurer, other members and employees, actively attempts to influence all kinds of legis-

lation in which the members of RLEA (the chief executive officers of appellants and certain other labor unions) believe the members of their unions have an interest (R. 179). The president of the appellant Brotherhood of Maintenance of Way Employees, in a report to the members of that union dated June 16, 1958, stated (Tr. 267):

"Our activities through the non-operating organizations differ from those in which we engage through Railway Labor Executives' Association in that the principal function of the non-operating groups [Employees' National Conference Committee; Seventy Co-operating Railway Labor Organizations which negotiated the union shop agreement—R. 205, 215] is that of negotiating for wages, working conditions and fringe benefits *while the Railway Labor Executives' Association functions in a broader area and conceals itself with many problems not directly related to collective bargaining*" (italics added).

RLEA's attempts to influence are through personal contact and persuasion of Congressmen and U. S. Senators (R. 179). RLEA's activities are financed by assessments upon the labor union defendants, and other members of RLEA as represented by their chief executive officers, which are paid out of the general dues funds of such labor organizations, contributed in part, of course, by individual appellees herein (R. 180-181). Such assessments in 1957 amounted to in excess of \$175,000 (see tabulation at R. 180-181).

The Chairman of the Railway Labor Executives' Association, Mr. G. E. Leighty, in a report to the members of his own union, the Brotherhood of Railroad Signalmen, one of the appellants, summarized the activities of RLEA as follows (Tr. 275):

"A number of the standard railroad labor organizations maintain full time national legislative offices in the city of Washington. Most of them who do this also maintain state activities which parallel on a state

level, in large part, the work of the national office. It has been the practice for many years when the associated organizations have a legislative goal in Washington . . . for all the organizations who can do so to supplement their legislative representation in Washington by assigning additional and temporary representatives. This includes those organizations which do not have regular representation in Washington. These additional men, together with the regularly assigned national legislative representatives, form a team or crew that works cooperatively in explaining the bills we want enacted and in marshalling support in the offices of Senators, Congressmen and elsewhere as the need arises. The RLEA office in Washington usually acts as a focal point for this concerted activity—as a sort of command post . . .”

AFL-CIO Department of Legislation.

The Department of Legislation of the AFL-CIO is under the direction of Mr. Andrew J. Biemiller (R. 125) who is responsible directly to the president of the AFL-CIO (R. 125-126). It is financed entirely out of the general funds (derived from dues) of the AFL-CIO (R. 126). Under Mr. Biemiller are four legislative representatives and a technical and clerical staff of eleven employees, all of whom are compensated from the dues funds of the AFL-CIO (R. 126). Mr. Biemiller and the four legislative representatives are registered lobbyists (R. 126).

From the merger of the AFL and the CIO on December 5, 1955 through June 30, 1956, the end of the first fiscal period of the merged organization, the Department of Legislation incurred expenses in the amount of \$92,343.01; during the fiscal year July 1, 1956 through June 30, 1957, such expenses amounted to \$139,071.47; from July 1, 1957 through June 30, 1958 such expenses were \$175,743.97 (R. 126). All of the above expenses were paid out of the general funds of the AFL-CIO (R. 126), and thus are financed by the dues required of individual appellees and the class they represent.

The purpose of the Department of Legislation is to promote the legislative program of the AFL-CIO and support for some, and opposition to other, legislation, principally federal legislation (R. 126-127). The duty of the Department of Legislation with respect to such proposed legislation is to attempt actively to secure passage of legislation favored by the AFL-CIO and to oppose legislation opposed by the AFL-CIO (R. 127).

The legislative program of the AFL-CIO, which the Department of Legislation seeks to promote, is not limited to legislation or proposed legislation directly affecting unions or union members as unions or union members but covers a broad range of other issues of interest not only to union members but to citizens generally (R. 129). The range of this program is set forth in a publication of the Department of Legislation entitled "Labor Looks at the 85th Congress" (R. 129). That document (Tr. 38) contains a summary of the "record" of the first session of the 85th Congress and lists legislative items on the agenda of the legislative committee for the second session of the Congress. As to the first session of the 85th Congress, the booklet mentions prominently, in addition to the "Labor Legislation", the following: "the Administration's 'tight money' policy", a resolution "to conduct a study of national monetary and credit policies"; an investigation of financial policies by the Senate Finance Committee; aid to school construction; welfare plan disclosure; housing; veterans' housing; area redevelopment; pollution; inspection; the Civil Rights Act; a proposed change in the cloture rule; the Jencks bill to protect F. B. I. files; the McCarran-Walter Immigration Act; various issues involving the support of public power as opposed to private power—Hells Canyon being the most prominent; and various issues involving world affairs. The last two pages of "Labor Looks at the 85th Congress" list the following measures which the Department of Legislation of the AFL-CIO says it has called upon the "Congress to work vigorously and speedily to complete" (Tr. 394, p. 31-32): (1) e

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overhaul of the Taft-Hartley Act; (2) extension of the protection of the Fair Labor Standards Act and an increase in the minimum wage to at least \$1.25 an hour; (3) major improvements in the social security system; (4) federal aid for school construction; (5) welfare and pension benefit disclosure; (6) strengthening of the Walsh-Healey and Bacon-Davis Acts and other labor legislation; (7) reduction of federal income taxes for low and middle income families and small business, and closing of the loopholes by which many wealthy persons and corporations evade paying their just share of taxes; (8) a program to provide assistance for areas of chronic unemployment; (9) authorization of federal development of the high-level Hells Canyon Dam for self-financing for TVA; and for expansion of the program to apply atomic energy to peacetime uses; (10) modernization of unemployment compensation system; (11) a housing program which will result in construction of 1 million units a year, plus expanded low-cost public housing and urban renewal; (12) federal protection for natural resources and consumers; (13) a comprehensive farm program, embracing price supports, conservation payments, low interest loans, and rural electrification; (14) liberalization of migration laws; (15) further improvement in civil rights legislation for all our citizens, and equal protection of the laws; (16) federal workmen's compensation and safety standards in atomic energy installations; (17) an adequate pay increase for federal postal and classified employees.

Appellants' Official Journals.

Each of the labor union appellants at the grand local level publishes one or more official periodicals which are distributed to the members of such organization (R. 199, 190). The publication and distribution of such periodicals is financed from dues paid by individual appellees and other union members (R. 190). The names of those publications, which are descriptive of the organizations publishing them, are listed on p. 98 of this brief.

A substantial portion of the contents of these publications is devoted to political and ideological including appeals for the contribution of funds to committees referred to above (R. 185). Appellants claim that the reporting in their Journals "is of a non-type and is designed to influence the readers thereof the particular political philosophy espoused by" (Tr. 189-190).

The political purpose of the "ELECTRICAL WORKERS JOURNAL", for example, is frankly admitted by the appellants (Tr. 280):

"In another vein, we wish to report that the complete union with the stand of the American Federation of Labor on political education, the IBF used the *Journal* as an implement to promote the program of Labor's League for Political Education. It published voting records, carried on campaign funds and printed numerous articles and editorials to alert our people to become more vote conscious."

The same thing is true, of course, of the other publications published by the labor union defendants, as the evidence record shows.

Publications of the AFL-CIO.

It is impossible in the confines of this brief to set out in detail the political, legislative and ideological content of the publications endorsed and supported by the "AFL-CIO NEWS", a newspaper financed by dues required of individual members (Tr. 953-993). Reference to any issue of this newspaper will, we believe, demonstrate its obvious partisan political approach in news, features and editorials.

The same is true of "The Federationist" the magazine published by the AFL-CIO with dues money collected from individual appellees (Tr. 797-869).

II.

Appellants were not denied due process by the court below.

A. The Judicial Processes Below Were Completely Fair and Impartial.

Appellants' argument that they were denied due process in the trial court is a strange one in view of the fact that it took five and one-half years to bring the case to decision. Their argument is completely without merit and appears to be an attempt to prejudice this Court against the Georgia courts (see *e.g.*, appellants' brief, pp. 10-11). They say (appellants' brief, p. 11) that the Superior Court of Bibb County, Georgia, subjected appellants "to a series of astonishing and oppressive procedural rulings, described in Appendix A hereof which they claimed deprived them of a fair opportunity to defend this case."

They complain (brief, pp. 105-106) that their answer to the trial court was stricken for having been filed after the time it was due. They neglect to point out that they themselves recognized that the answer was late as the answer was accompanied by a motion to permit it to be filed, containing excuses for not having filed it earlier. The appellants have no right to a revision of the Georgia laws of procedure and practice merely because their attorneys were over-confident of the merits of their demurrers and elected to rely on them. And, as the record will show, their answer and amendment to it were in fact on file, with appellees' counsel, at the time the case was tried (R: 89-97, 98-99, 100).

Appellants complain (brief, p. 106) that the trial court entered an order for discovery which was too sweeping in its terms, and allege that the Court did not comply with certain procedural requirements of Georgia law. The trial procedures in this case were pursuant to Georgia law. In any event, appellants did not allege, and it is no fact, that any material produced by virtue of that order was in the evidence of record.

They complain of being driven into a "stipulation" (brief, pp. 107-108). They say it is referred to above that made them enter into a stipulation (brief, pp. 107-108):

"It is apparent, although the trial court refused to include it in the Bill of Exceptions, that because of the burdensome nature of that order, requiring the defendants to produce truckloads of depositions to disrupt their operations, and furnish expenses, it drove them into the one-sided stipulation. In fact, above, the trial court also refused to include the Bill of Exceptions, although it was in fact the trial court, that officials of organizations involved in this case were produced by these organizations, that although two to four lawyers represented the defendants or those witnesses were present at the depositions, no objections were made, no questions asked by plaintiffs and no cross-examination conducted by any of them. R. 114, 121. We believe this Court could take judicial notice of such a situation could not arise and that the taking of six depositions, unless in advance, as part of the price of obtaining a stipulation instead of complying with the order of 1958, that we would not object to any stipulation, would not conduct any cross-examination. The reading of those depositions will make the stipulation clear, and it is the fact, that the questions were written out in advance, with the stipulation that any departure from such prepared answers would terminate the negotiations."

It is obvious that under the guise of asking the Court to take judicial notice of certain matters, the defendants insinuated extensive non-record and non-factual matters in their brief. In view of such action by the defendants, they are compelled to inform the Court of the same.

In the first place, there is no basis for the defendants' contention that the May 8th discovery order was driven into the one-sided stipulation."

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That order clearly provided for easy compliance by appellants at their own offices, rather than elsewhere. The order contained the following alternative provision:

"It is Further Ordered that any of said parties, in lieu of the production and testimony in Georgia, may elect to have its production and testimony with respect thereto take place at the office of such defendant and before a duly qualified commissioner of this Court at a time agreed upon by counsel for all parties, not later than June 1, 1958."

Furthermore, it must be pointed out that the fact that that order was made necessary by the fact that the appellants' counsel informed the Court as well as counsel for the appellees that appellants would resist efforts to compel the production of relevant documents and testimony with respect thereto through the cumbersome procedure of taking Georgia commissions for the taking of testimony in other states, which commissions would have to be taken in the courts of such other states.

The single examination which actually took place on the May 8th discovery order occurred at the offices of the appellants, took only two days and did not require "truckloads" of records, as that appellant's witness was able orally to describe its record system and that only a minimum of essential records, and that with no inconvenience.

If the May 8, 1958, order were invalid, as appellants contend, they could have refused to obey it, and the issue of invalidity could have been determined by the appropriate court, as such determination ultimately would be made when the Supreme Court of Georgia rejected the contention appellants are advancing here, a contention that should be final as to any state practice of appellants' argument.

Similarly, if appellants believed that they were in fault when they delayed three and one-half years in filing their answer in the state court, they could

proceeded upon that belief and that question had been decided ultimately by the appropriate court.

The appellants suggested the stipulation in the May 8, 1958, order, but because counsel for individual appellees were scheduled to take the deposition of appellants' chief Washington agent in contributing political largesse. It was at that time that emissaries from RLPL, an agent of appellants, approached counsel for individual appellees to suggest that, if that man's deposition were taken, important national political figures would be involved, a difficulty which could be avoided by a stipulation. Under the circumstances individual appellees agreed to expedite the proceeding (R. 162), being in order to secure an adequate record for decision of the questions involved rather than in embarrassment. Appellees gave up substantial advantages in return for such a stipulation because it is clear that the facts of the appellants' political activities were more colorful than a stipulation.

The Court will notice that the truthfulness of the stipulation is attested by counsel for appellants (R. 163, 164), and counsel do not now suggest that the stipulation is not factual. That stipulation does not state merely what appellees wanted—the precise facts of each factual stipulation was threshed out by the parties, and the entire stipulation was a result of negotiations over a period of several months—from May 9, 1958 to August 1, 1958. Three counsel for appellees across the table, and three or more counsel for appellants, and their organizations, mostly in a hotel room in Washington, more than 500 miles from the office of appellees, insisted at all times that all items stipulated to be absolutely truthful. Since the depositions in this case were merely a device for authenticating matters in the stipulation so far as the organizations completely dominated by RLEA, RLPL and MNPL, and for placin

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The stipulation is not subject to any of the do
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Appellants claim that counsel was denied ade
for preparation of oral argument (brief, pp.
That clearly is not the case. The record shows
ment did not take place until a week after trial

It is not usual for argument to be deferred for a week after a trial—generally argument begins the moment the evidence is completed. Furthermore, as appellants have pointed out, counsel for the appellants knew three months in advance of trial what most of the evidence would consist of. They knew 15 days in advance of trial what the remainder could consist of (R. 163). Furthermore, the case had, at time of trial, been pending nearly 5½ years; counsel for appellants in this case had participated in *Hanson* as well as other litigation in this field. Clearly they were not unprepared to argue this case a week after the close of trial. Nor do they now intimate how their argument could have been improved had they been allowed as much time as they requested. Trial courts in Georgia (as in most other states) do not postpone argument until a written record is available, as interminable delays would be involved.

The discussion above answers also appellants' contention that counsel for appellants had inadequate time in which to argue with respect to the proposed final order and decree of the trial court (brief, pp. 104-105). Appellants elsewhere in brief have stated their legal objections to that order. They have not indicated any objections which they did not note at trial. In any event, the order and decree is now before this Court for review on the merits—and appellants are now free to advance any and all arguments which they wish with respect thereto. But we submit that it is not becoming of appellants to cast aspersions upon a trial judge who demonstrated his impartiality by sustaining all of appellants' objections when the case first came before him in 1957 on motion to strike.

B. This Suit Was Properly Brought as a Class Action.¹

This suit was brought as a class bill on behalf of the named petitioners and "in behalf of others similarly situated" (R. 17-18).

Georgia Code Section 37-1002 provides:

"Members of a numerous class may be represented by a few of the class in litigation which affects the interest of all."

In *The Macon and Birmingham Railroad Company v. Gibson*, 85 Ga. 1, 11 S. E. 442 (1890), an action for injunction involving the routing of a railroad, where two citizens brought suit on behalf of all the inhabitants of a municipality, the Supreme Court of Georgia held (85 Ga. 23-24):

"A further question is whether some of the citizens of Thomaston, suing in behalf of themselves and all their fellow-citizens of the town, will be sufficient as parties plaintiff in this proceeding, or whether all the citizens must join as such plaintiffs. The interest being common to all as a community, and the citizens being numerous (of which fact we can take judicial notice from public statistics), we think the case is provided for by a well-recognized rule which has long prevailed in equity, and that some, as representatives of the class may sue for all. Story's Eq. Pl. § 94 *et seq.*; Mitf. Eq. Pl. marg. p. 167 *et seq.*; Spence Eq. Jur. 656; 1 Daniell Ch. Pr. 234, 237; Pomeroy Rem. & Rem. Rights, § 388 *et seq.*; Hawes on Parties, § 92, 1 Pomeroy Eq. Jurisprudence, § 251, 255, 269, 274; Phillips v. Hudson, L. R. 2 Ch. 243; Comrs., etc. v. Glasse, L. R. 7 Ch. 456; Smith v. Swormspedt, 16 How. 302. It is

¹ This general question goes to the right of named appellees to represent unnamed non-operating employees "similarly situated" even though employed in other crafts or classes. Appellants' argument is framed as an attack both upon named appellees as proper class representatives, and also upon their right to sue any appellant union where no named appellee is employed in a craft or class represented by that union for collective bargaining purposes.

true that as only two of the citizens have become parties; it is rather a small representation of the whole community; but considering the publicity of the case and of the interest involved in it, and the fact that the suit is located in Upson County and will be tried (if tried at all) at the county town, which is the town whose citizens are interested, there can be no cause to apprehend that the two plaintiffs on the face of the petition will be disposed, or if so disposed, allowed to misrepresent the community in whose behalf they have brought this suit. No doubt it is somewhat discretionary with a court of equity as to how many representatives of a class will, or ought to be, regarded as a fair representation of the whole class in the given instance. We simply rule that this is a proper case for some of the citizens to represent all, and that the number of representatives, though the smallest that could be recognized, is not, as matter of absolute law, insufficient."

The trial court held in the instant case (R. 101):

"The Court has jurisdiction of all parties and of the causes of action asserted by the plaintiffs. This is a class action in which the plaintiffs represent herein all non-operating employees of the railroad defendants affected by, and opposed to, the hereinafter referred to union shop agreements, who also are opposed to the collection and use of periodic dues, fees and assessments for support of ideological and political doctrines and candidates and legislative programs or for other purposes other than the negotiation, maintenance and administration of agreements concerning rates of pay, rules and working conditions, or wages, hours, terms or other conditions of employment or the handling of disputes relating to the above. The individual defendants and labor organization defendants represent all the members of said labor organization defendants."

That finding was within the trial court's general competence. It was excepted to by the appellants (R. 229-230)

Bill of Exceptions, pars. 4 and 5). The trial court's finding was sustained by the Georgia Supreme Court (R. 263-264). The question of whether this a proper class action, both as to plaintiffs and defendants, being one of state court procedure, it was peculiarly within the province of the Georgia Supreme Court to give the final answer as it did.

The class action question is mentioned on page 20 of appellants' brief:

"Another deprivation of due process was entering the judgment in favor of an amorphous 'class' the components of which cannot be determined without reading their minds and thus subjecting appellants to contempt for conduct they could not have known would violate the injunction when they engaged in it. The sustaining of a class action further denied appellants due process by subjecting all but one of them to suit by persons who had no standing to sue them, that is, by persons not affected by anything any but one of the appellants has done or might do."

The Court will notice in that "summary" of appellants' argument that appellants recognize that the only question for this Court is whether a finding that this case is a class action infringes appellants' constitutional right to due process. The Court is also referred to page 8 of the jurisdictional statement where the question presented to the Court is framed exclusively in constitutional terms.

A short answer to the contentions of the appellants is that they have stipulated to the contrary and are now in no position to say that the class action is improper either as to plaintiffs or defendants. Thus, appellants stipulated (R. 166-167) as follows:

"The plaintiffs and intervening plaintiffs fairly and adequately represent for the purposes of this litigation the interests of the employees and former employees of the railroad defendants specified in the two preceding paragraphs, . . . these being all those

employees or former employees of the railroad defendants affected by and opposed to the union agreement who also are opposed to the use of periodic dues, fees and assessments which they have been, are and will be required to pay to support ideological and political doctrines and candidates and legislative programs set forth in this Stipulation Facts"

The "employees and former employees . . . specified in the two preceding paragraphs" are those employees who were compelled "to become members of the *defendant labor union organizations*" or were discharged because of their refusal to become "members of the *labor union defendants*" (italics added).

It thus appears that appellants have stipulated that this class of plaintiffs is appropriate and is fairly and adequately represented, and that the class consists of employees represented by all of the "defendant labor union organizations." Appellants cannot properly contest these matters before this Court in the face of their stipulation.

A further short answer to the argument of the appellants is that it has no materiality in view of the fact that even if the class were not proper, the court below has unquestioned jurisdiction to adjudicate the rights of individual appellees. Thus, the basic legal issues were before the lower court, and are now properly before this Court, and once this Court has spoken it will make no difference what *persons* are bound, since all courts will be bound to apply the same principles to all persons similarly situated.

The Court is urged to examine closely the actual argument presented by appellants on the "class action" problem (brief, pp. 65-79).

In the general introduction to the argument, the statement is made (appellants' brief, pp. 65-66) :

"It is obvious that a class suit, in which a judgment may bind absent persons, cannot be brought unless

requirements of due process with respect to such persons are satisfied. *Smith v. Swarmstedt*, 16 How. 288, 301-3, 14 L. Ed. 942; *Macon and Birmingham Railroad Co. v. Gibson*, 85 Ga. 1, 24; *Hansberry v. Lee*, 1940, 311 U. S. 32, 61 S. Ct. 115, 85 L. Ed. 22."

With that general statement we are in thorough agreement.

But, as examination of the cases cited will show, the courts were discussing due process as to the *absent persons*.¹ Those cases did not involve a question as to due process to be accorded the parties actually present. The labor union appellants, who have claimed a denial of due process, were actually present at all stages of this proceeding. They have had no rights adjudicated in their absence about which to raise due process questions.

Smith v. Swarmstedt, cited by appellants, strongly supports the class action procedure in this case. There the Court stated (*op. cit.*):

"The rule is well established, that where the parties interested are numerous, and the suit is for an object common to them all, some of the body may maintain a bill on behalf of themselves and of the others; and a bill may also be maintained against a portion of a numerous body of defendants, representing a common interest. (Story's Eq. Pl., secs. 97, 98, 99, 103, 107, 110, 111, 116, 120; 2 Mitf. Pl. Jer. Ed., 167, 2 Paige, 19; 4 Mylne & Cr., 134, 619; 2 De Gex & Smale, 102, 122.)

"Mr. Justice Story, in his valuable treatises on Equity Pleadings, after discussing this subject with his usual research and fullness, arranges the exceptions to the general rule, as follows: 1. Where the question is one of a common or general interest, and one or more

¹ In *Hansberry* the Court stated the question as follows (311 U. S. 37): "The question is whether the Supreme Court of Illinois, by its adjudication that petitioners in this case are bound by a judgment rendered in an earlier litigation to which they were not parties, has deprived them of the due process of law guaranteed by the Fourteenth Amendment."

sue or defend for the benefit of the whole; the parties form a voluntary association for private purposes, and those who sue or defend fairly be presumed to represent the interests of the whole; and 3. Where the parties are numerous, and though they have separate interests, yet it is impracticable to bring them before the court."

Classifications 1 and 3 both fit this case. The above also reveals the inappropriateness of the statement (brief, p. 73) that "If the Court cannot create the [money] claims of the entire class, the device is not properly used."

The Court in the *Smith* case went on to say (303):

"In all cases where exceptions to the rule are allowed, and a few are permitted to sue on behalf of the many, by representation, it must be taken that persons are brought on the case representing the interest or right involved, and that the case may be fully and honestly tried."

Appellants do not argue that interests of members of the class represented by the individual appellees were inadequately protected, or that, in fact, the case was not "fully and honestly" tried. They argue, apparently, that such absent members were left out of the case. The plain fact is that the appellants, which complain of lack of due process as to the case, predicate their claim upon alleged rights of the class represented by the individual appellees. If any of the employees feel that they have been inadequately represented, that question will arise, if ever, in a case where they, not the appellants, place that issue, as in *Hansberry*.

The Court's attention is called especially to the court's finding and decree (R. 107):

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of the defendant railroads similarly situated, and
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if any, of any members of such class, who ha-
made an individual personal appearance in this

It seems clear that this Court does not consider
essary that all members of a class be definitely ident-
in advance in order to maintain a class action. For
ample, in *Felter v. Southern Pacific Co.*, 359 U. S.
329-330 (1959), the Court stated that it would not be
essary to determine "how many other employees w-
fact similarly situated with petitioner" in order to m-
the dispute, as the matter could be determined as
the extent necessary by the trial court at a later time.
Frasier v. Board of Trustees, 134 F. Supp. 589, 59
(M. D. N. C. 1955), *affirmed per curiam*, 350 U.
(1956) the Court apparently regarded as sufficient
nite a class which consisted of "all Negroes who p-
the qualifications for entrance to the University" and
Negroes who subsequently apply for admission." So
the following cases involving class actions where the
did not consider it necessary to determine whether
those in the "class" desired the relief being sought
plaintiffs: *Evers v. Dwyer*, 358 U. S. 202 (1958); *Br-*
Board of Education, *supra*; *Steele v. Louisville & N-*
supra; *Tunstall v. Brotherhood of Locomotive Firem-*
Enginemen, 323 U. S. 210 (1944); and *Howard v. B-*
hood of Railroad Trainmen, 343 U. S. 768 (1952).

With respect to appellants' contention (brief, pp.
that plaintiffs are without standing to sue any uni-
cept the one that represents their class, we submit
they are confusing "class representation" in a col-
bargaining sense with "class representation" in a
cedural sense.

Furthermore, the evidence is plain that the agreement, though it states that it shall be a separate agreement by and on behalf of appellees hereto and those employees represented by appellees, nevertheless is *one* document. It was signed and executed as part of a single movement, and appellants were represented by a single name, "the Employees' National Conference Committee," the "Seventeen Cooperating Railway Labor Organizations" (R. 215), which had served a uniform notice on all the roads generally throughout the United States, and each of the nine railway company members of the Southern Railway System (R. 35); which carried through an Emergency Board hearing and recommendation that "all carrier parties begin negotiations for a joint national agreement with the seven unions represented through their Employee Conference Committee" (R. 35), and which justified the strike of the Southern Railway System. The agreement were not entered into between appellants and the cooperating appellants, but also Plaintiffs' Exhibit 438 (Tr. 944); Page 441 (Tr. 948). Through their chief executives, appellants all belong to, and help finance, RLPL, which contributes heavily to RLPL, an organization of the same constituency (R. 182-184), which contributes heavily in political activities which the appellees oppose (R. 184-188, 306-314, 316). The two, part owners of "LABOR" (R. 189) contribute extensively in politics (See pp. 26a-27a) and contribute heavily to the AFL-CIO (R. 31) and pours a substantial amount of money (R. 135-137, 319) which conducts political activities by appellees (R. 141-152, 277-299, 315), a Department of Legislation (R. 126) which conducts legislative activities opposed by appellees (R.

that the union shop
 be construed "as a
 of each carrier party
 ed by each organiza-

It was negotiated
 vement in which all
 e negotiating agency,
 e Committee, Seven-
 organizations" (R. 205,
 notice upon the rail-
 ed States, including
 mbers of the South-
 carried the demand
 g resulting in a rec-
 before it enter into
 seventeen organiza-
 oyes' National Con-
 h jointly threatened
 em if a union shop
 een the railroad de-
 lants (R. 44). See
 ; Plaintiffs' Exhibit
 executives, the appel-
 RLEA (R. 179, 180)
 n organization with
 which participates
 e, individual appel-
 They are all, except
 189) which engages
 a above). They all
 317-318, 319) which
 ey into COPE (R.
 activities opposed
 , as well as its De-
 h engages in legi-
 (R. 217-230).

Clearly, it was appropriate for the trial court
 sideration of the above, to enjoin all the defen-
 enforcing the union shop agreements (R. 105).

The other contentions of appellants in Part
 brief simply relate to procedural questions
 process implications whatever. On these poin-
 sion of the Georgia Supreme Court should be

**C. The Appellants Were Not Denied Due Process
 the Provisions of the "Findings, Conclusions,
 Order, Judgment and Decree."**

Part VIII of appellants' brief is devoted to
 tion that "Appellants were denied due process
 findings, a judgment and a decree being entered
 the jurisdiction of the courts below" (brief, p. 10).
 That contention is completely without merit.
 argument under Part VIII is almost exclusively
 matters, many small and detailed, which the court
 had the sole responsibility for deciding, but, in
 this Court may be assured that there is no substance
 ever to appellants' argument, we will discuss
 matters raised by them.

Brief, page 87. Appellants assert that there
 identification of individual defendants.

The individual appellants were named as
 originally solely for the purpose of securing
 over the labor union appellants since, at that
 labor unions could not be sued in Georgia as legal
 Those individuals, however, are identified as
 bers or officers of the labor union appellants
 following locations in the record: R. 18-20 (Answer
 Petition); R. 23-29 (Amendment to Petition);
 swer of Railroad Defendants); R. 158-159, 160
 tion—appellants Jesse Clark, M. G. Schoch,
 Harrison, Anthony Matz); R. 215-217 (signator
 Shop Agreement: Earl Melton and L. C. Ritter
 Vice President and General Chairman, respect-
 defendant International Association of Machinery

J. MacGowan and Norman Dugger as President and General Chairman, respectively, International Brotherhood of Boilermakers, Builders and Helpers of America; John D. Steadman as General President and General Chairman, respectively, of the International Brotherhood of Bridge and Structural Ironsmiths, Drop Forgers and Helpers; C. D. Roberts, as General Vice President and General Chairman, respectively, of the Sheet Metal Workers International Association; J. J. Duffy and B. R. Acuff, as Vice President and General Chairman, respectively, of the International Brotherhood of Electrical Workers; Barney and W. W. Dyke, as General President and General Chairman, respectively, of the Brotherhood of Carmen of America; Anthony Matz and John J. O'Connell, as President and General Chairman, respectively, of the International Brotherhood of Firemen, Roundhouse and Railway Shop Laborers; John J. O'Connell and G. A. Link, as Grand President and General Chairman, respectively, of the Brotherhood of Steamship Clerks, Freight Handlers, Expeditors and Dock Employees; J. P. Alexander and G. W. Alexander, as President and General Chairman, respectively, of the Brotherhood of Maintenance of Way Employees; F. G. Gardner and H. R. Duensing, as General President and as signatory, of and for The Order of Railway Telegraphers; Jesse Clark and E. C. Melton, as President and General Chairman, respectively, of the Brotherhood of Railroad Signalmen of America; J. J. O'Connell as Secretary-Treasurer of National Organization of Marine Mates and Pilots; William O. Holmes, as Treasurer National Marine Engineers Beneficial Association; O. H. Braese and R. M. Crawford, as President and General Chairman, respectively, of the Association of Dispatchers; and M. G. Schoch as President and General Chairman, respectively, of the Brotherhood of Railroad Yardmasters of America). Cannot not correct to say that "there is nothing in the record to show who the individual defendants

International Presi-
 ely, of the defendant
 rmakers, Iron Ship
 John Pelkofer and T.
 l General Chairman,
 urtherhood of Black-
 D. Bruns and W. G.
 l General Chairman,
 rs International As-
 ff, as International
 respectively, of the
 cal Workers; Irvin
 President and Gen-
 rotherhood Railway
 d J. H. Desotell, as
 pectively, of the In-
 n, Oilers, Helpers,
 rs; George M. Har-
 sident and General
 hood of Railway and
 Express and Station
 V. Ball, as General
 of Way Employees;
 General Chairman,
 r of Railroad Tele-
 on, as Grand Presi-
 ely, of the Brother-
 a; John M. Bishop,
 ganization Masters,
 as Secretary-Treas-
 e Official Association;
 as President and
 e American Train
 och and H. E. Ivey,
 respectively, of the
 Consequently, it is
 g anywhere in the
 ndants are or what

authority they have or are otherwise in a
 represent anybody," as appellants say.

Appellants disagree with the finding of the
 that "the union shop agreement imposed a
 employment or continued employment." They
 imposed only a condition of *continued* empl
 think the appellants are quibbling. It suffic
 agreement imposes a condition of continued

Brief, page 88. Appellants here attack par
 the trial court's findings on various grounds.

They say that there is nothing in the rec
 that any of the labor organizations use fun
 from plaintiffs (the individual appellees and
 the class represented by them) to support po
 paigns of candidates for federal office, both sep
 collectively. That contention is inaccurate.

Paragraph 45 of the Stipulation of Facts stat

"The money which has been, is being
 paid by plaintiffs, intervening plaintiffs a
 they represent as dues, fees, and asses
 been, is being and will be used in substan
 support candidates for the offices of Pre
 President, U. S. Senators, and Congressme
 campaigns as described elsewhere in this
 of Facts, and for direct contributions to
 for various state and local offices, as des
 where in this Stipulation of Facts."

As an example of such use of funds "separ
 single union, we refer to the material concer
 which is simply a part of the IAM (R. 115-1
 299-306, 315). See also pp. 98-100, *supra*. The
 clear with respect to the "collective" politic
 of the appellants acting through RLPL (R. 1
 187; 306-315), COPE (R. 123-124, 125-131, 1
 315, 317-319, 322-323) and "LABOR" (R. 189

Appellants say there is no showing such can
 opposed by plaintiffs or the class they represe

example, to the contrary: R. 176 (Stip., p. 19), R. 186 (Stip., p. 34), R. 188 (Stip., p. 44). Furthermore, it is not essential to the constitutional issues involved that an employee be opposed to a given candidate separate and apart from his opposition to having his money used to support such candidate. As between two candidates, both of whom an employee favors, he may wish that all of his support be placed behind one to the exclusion of the other.

The fact that such contributions might be in violation of the Federal Corrupt Practices Act has nothing to do with this case. It is clear that it would be a violation of that Act for the appellants to take dues money and donate it as a direct financial contribution to a candidate for federal office. But appellants use subterfuges.

Following enactment of the Taft-Hartley provision (18 U. S. C. 610) prohibiting contributions of union funds to candidates, the appellants, and cooperating labor organizations, established their political leagues and committees (see Plaintiffs' Exhibit No. 5—Preface—Tr. 391). The by-laws or constitutions of the leagues established by appellants are of record (Plaintiffs' Exhibit No. 3, Tr. 377—MNPL; Plaintiffs' Exhibit No. 431, Tr. 924—RLPL). COPE is simply a committee of AFL-CIO (R. 132). They are all operated on the assumption that, while coin (or other things of value) must not pass directly from the union to the candidate for federal office, it is perfectly legal for the union funds to be used to meet the general overhead of the leagues and committees and for what is termed "political education."

We have quoted at pp. 23a-24a above from a "COPE Report" showing how "political education" is simply an integral part of the political process designed to elect favored candidates or defeat those appellants oppose. Plaintiffs' Exhibit 3 (Tr. 379) contains the following. (Tr. 383):

"7. Question: Why is it necessary to have year-round money raising activity in the Machinists Non-Partisan Political League?"

Citizenship education and political activity, to be effective, must be continuous. It is important to get voters to understand issues and to know about candidates' records, and it is impossible to achieve this in a few short weeks before elections. Many issues are complex; they require study and discussion in order that intelligent resolutions and communications may be drafted. This means that Legislative Committees and Machinists League Committees must work continuously to increase popular understanding on issues and candidates and to create the necessary organizations and financial resources to elect Labor's friends and defeat Labor's enemies."

"How to Win", COPE's "Handbook for Political Education", Plaintiffs' Exhibit No. 15 (Tr. 416) states (p. 56):

"Political action is not just voting. COPE needs money to arouse people to the important issues, conduct registration drives, organize wards and precincts, prepare well ahead of time for the coming election campaign. The most effective political work is sometimes done between campaigns."

Speaking in July 1957 (an off-year for federal campaigns), Mr. James L. McDevitt, COPE's Director, stated (Plaintiffs' Exhibit 372, Tr. 863, pp. 8-9):

"Already COPE is getting requests for campaign funds from candidates who either are facing election battles this year or who recognize that a planned dollar spent early next year can do the job of ten dollars that are hastily thrown in during the heat of a campaign."

"The folks on the sixth floor of the AFL-CIO Building who constitute the staff of COPE are pretty friendly and cooperative people with generally jolly dispositions. About the only way you can get a frown

from any of them is to say: 'What are you all so busy about? Isn't this an off year?'

"It's like asking a frontline infantry soldier: 'Don't you know there's a war on!'"¹

Yet Mr. McDevitt testified in this case that it is only during the last two months preceding the biennial elections for Federal office and for a short period of time after such elections that salaries and travel expenses of COPE's personnel and other operating expenses, except for space provided by the AFL-CIO, are paid out of ICF (R. 142).

With respect to RLPL, it has been stipulated (R. 182-183):

"Railway Labor's Political League was formed for the specific purpose of engaging in political activities dealing with the election of candidates to public office. The organization maintains two funds—one the so-called 'educational' fund and the other the so-called 'free' fund. Railway Labor's Political League received, receives, and will receive direct grants into its 'educational' fund from the general funds of the union defendants and from the Railway Labor Executives' Association. The monies in the 'educational' fund are used, except in Wisconsin, New Hampshire, Pennsylvania, Indiana, Texas, and Iowa, to support candidates for public office at the State and local level; for publicity to support candidates on the national as well as the State and local level; for administrative expenses to operate Railway Labor's Political League generally (including the salaries of the paid employees of that organization; office expense, supplies, etc.); and for miscellaneous activities in supporting candidates (whom plaintiffs, intervening plaintiffs, and the class they represent op-

¹ Concerning the 1956 election, Mr. McDevitt said (Tr. 665, p. 17):

"We lost the presidential fight, not that it would have made any difference but you will recall that we were only in it for five weeks when the general executive board made their endorsement but we had been campaigning the year for friendly candidates and congressmen in the Senate."

pose) at the national, State or local level, such as transportation of voters to and from the polls, preparation and distribution of voting records, preparation and distribution of sample ballots, and the preparation and distribution of various types of political literature soliciting or influencing support for candidates for political office on the national, State and local levels.

"The administration, operation and maintenance of the 'free' fund activities of Railway Labor's Political League has been, is and will be financed and supported by direct expenditures from the 'educational' fund of Railway Labor's Political League derived from the general dues funds of the labor union defendants."

It is clear that appellees' moneys are being used for partisan politics even though the actual donations to candidates may come from so-called "voluntary" contributions. We do not know whether this payment of "overhead" out of dues money is in violation of the Corrupt Practices Act. We are certain that it violates the individual appellees' personal rights guaranteed by the Constitution.

The trial court's finding that the appellants "support by direct and indirect financial contributions and expenditures the political campaigns of candidates for State and local public offices" has ample support in the record. Paragraph 20 of the Stipulation of Facts states, in part (R. 176-177):

"A substantial portion of the periodic dues, fees and assessments required of plaintiffs, intervening plaintiffs, and the class they represent, or which will be so required, has been, is being and will be retained by, or remitted to, the individual local lodge of the labor union defendant to which each person paid and will be required to pay his dues, and has been, is being, and will be used . . . except in Wisconsin, New Hampshire, Pennsylvania, Indiana, Texas and Iowa, to extend substantial financial support to candidates for public office in the executive, legislative and judicial branches of the state and local governments in the locality of the local union."

There is no need for the record to include a roster of local lodges of the appellant unions. We believe each of them is sufficiently identified as "the individual local lodge of labor union defendant to which each person paid and be required to pay his dues." The fact that none of the defendants is a local lodge is quite irrelevant. The matter complained of is a finding with respect to the mechanism which dues money is being used for political purposes. The appellants are unions, national in scope, having local lodge system committees and grand lodges.

Brief, pp. 88-89. Appellants assert there is no evidentiary support for the trial court's finding that the funds collected from appellees are used "to impose upon plaintiffs and the class they represent, as well as upon the general public, conformity" to "certain political and economic doctrines, concepts and ideologies" and conformity to legislative programs.

This contention is discussed in Part II B 3 of this brief and needs no further elaboration here.

Brief, pp. 89-94. Appellants complain of the fact that the trial court found a commingling of appellants' funds (derived from dues, fees and assessments) used for political and ideological purposes with funds used for other purposes, and the fact that the trial court's findings relate to all defendants.

There clearly is a commingling of appellants' funds with respect to the principal agencies of political and legislative activity and ideological indoctrination. Those agencies are: RLPL, which receives the bulk of its money from RLEA (Stipulation, Par. 30, R. 183-184) which receives its moneys from assessments against the appellant unions (R. 180-181); "LABOR," and the appellants' individual periodicals, which receive funds from subscriptions paid by the union appellants (with one exception) in varying amounts (Stipulation, pars. 47, 48, 50; R. 189) and CO, financed by per capita taxes upon the union appellants (and other labor unions) on the basis of membership (R. 189).

137, 178, 317-319, 322-323). Analysis of these four expenditure items alone was sufficient to convince the trial court of the futility of trying to segregate the amount of each employee's dues expended by the appellants for the proscribed purposes.

Similarly, in view of the uniform participation by all appellants in these four items, constituting the major portion of the political and ideological activities, there was no need to incorporate in the findings items peculiar to individual appellants. They all participate, as the record shows, in enough common activities to justify the trial court in treating them uniformly.

At page 91 of their brief, appellants state:

"Paragraph 29 of the stipulation states that Railway Labor's Political League received direct grants into its 'educational' fund from the general funds of the union defendants. R. 182. But it is plain from the very next paragraph of the stipulation that except for trivial and insignificant amounts, obviously nothing more than corrections of bookkeeping entries, only three of the labor organization defendants have ever contributed money to RLPL's educational fund."

"Direct" grants by the three labor organizations mentioned surely are enough to support the precise language of the trial court. However, we are concerned that the appellants may be attempting, by emphasis upon the word "direct", to convey the impression that only three appellants pour money into RLPL. The record shows that RLPL receives large and substantial sums each year from RLEA (Stipulation, par. 30, R. 184). Stipulation, par. 27 (R. 180-181) shows the origin of those funds, including assessments levied upon each of the appellant unions, "paid out from the general dues funds of those organizations." The \$75,000 which RLPL received from RLEA in 1957 (R. 184) amounts to more than 40% of the assessments by RLEA upon all appellants (R. 180-181). The use of RLEA as a conduit for channeling funds from the union appellants to RLPL does

not, in our opinion, make such grants indirectly relevant that the local lodges were not identified. RLPL received funds from the general dues of each of the appellant unions, and each union from both national and local and system lodges. The individual and separate entities and organizations of the appellants apparently would have the Court believe

Appellants seek to impugn the integrity of the (brief, p. 92, footnote):

“Obviously the trial court did not study the record in this case in the fleeting instant before the close of oral argument on the merits and the announcement of his decision, or in the fleeting instant after the close of argument on the proposed order of announcement that he would sign it as presiding judge.”

The trial court had had the stipulation since September 1958 (R. 92)—nearly two months; the court had the evidence put into the record over a four-day span, and nearly a week longer to consider the effect of the stipulation before oral argument, which itself took two days. The court was able to consider the evidence of the stipulation in arriving at its final order.

Brief, pages 94-99. Appellants here discuss “the same matters were previously discussed and decided.”

Briefly they reargue their contention that Georgia policy is not violated, a contention covered *supra*. They also argue a proposition stated at page 99 of their brief as follows:

“Surely it cannot be argued that the courts of Georgia have authority to overrule the courts of other states as to what is the law in those states, and give rights to residents of those states which the courts of those states have held such persons were not entitled to have.”

Appellants then refer to various decisions in the Supreme Court of South Carolina, North Carolina, Virginia, and

direct. It is ir-
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 al dues moneys
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 They are not
 izations as ap-
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the trial court

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 nstant between
 order and his
 oresented."

September 23,
 had heard the
 span, and had
 f the evidence
 days. Clearly
 of record fully

"the Decree".

however, the
 d covered.

Georgia public
 upra, page 50.
 ages 94-95 of

ts of Georgia
 f other states
 give relief to
 urts of those
 ot entitled to

the courts of
 nd Florida.

This contention is a sham. It misstates the subst-
 the holding of the courts and decisions mentioned.

Only one of the decisions mentioned (*Allen et al. v. v-*
ern Railroad Company et al., 249 N. C. 491, 107 S.
 125 (1959)) involved the proposition that it is a vi-
 of the constitutional rights of an employee covered
 union shop agreement for funds exacted from him
 such agreement to be used for political and ideologic
 poses which he opposes. In that case, the North C
 Supreme Court did not hold that such rights we
 violated—it simply interpreted *Hanson* as so holdin
 deferred to what it considered to be this Court's d
 We have already indicated that rehearing was gra
 that case and that it is now pending on reconsideratio
 decision of the trial court in the *Allen* case was again
 unions. The Supreme Court of North Carolina is sti
 heard from in that case.

In the other cases,¹ the holding of the courts was
 that the union shop agreement involved was aut
 by the Union Shop Amendment, state law to the co
 notwithstanding. Such rulings merely adopt this
 view in *Hanson*; they do not reach the constitution
 sues here involved.

We do not predicate our case upon the existe
 right-to-work laws in all states where affected em
 may be employed. Our case is predicated upon the
 Rights which protects all Americans (and others
 The state right-to-work laws in states on the S
 Railway System² are of significance to this case

¹ We have not seen the decision in the *Jarrett* case, rel
 on page 95 of appellants' brief. If its holding is corre
 scribed by appellants, it is immaterial to this case. We
 argue that the only manifestation of governmental actio
 nullification by the Union Shop Amendment of contra
 laws. See Section IIA of this brief.

² Florida Constitution, Declaration of Rights, Section
 amended;

Alabama Code Section 26-383 et seq.;

South Carolina Code Section 40-46 et seq.;

that they demonstrate that the union shop agreement on the Southern Railway System is the result of the type of governmental activity present in *Hans*. As have shown above (Section IIA) there are no manifestations of governmental action present in also.

The union shop agreement at issue here is one. There is nothing in it that would permit its application to a single state, or group of states, only. It is an instrument affecting several states. Its effect depends on nullification of all possible contrary laws (made and statutory) in all states served by the Southern Railway System. So far as the governmental action is concerned, and that is the *only* aspect of it involving state laws, it is immaterial to the remedy by a particular employee that the state of his residence or employment, does not have a right-to-work law.

Appellants' argument concerning paragraph 1 of the decree (brief, p. 96) has been covered in Section I of the brief.

Appellants also question (brief, p. 97) whether irreparable injury was present. They disparage the amount of damages involved. The sums involved for each employee are substantial. And without the injunction, damages could accrue, year by year, and become irreparable. Moreover, the alternative to payment of dues for employment—clearly would be irreparable.

In their Petition for Removal in 1953, the appellants alleged (R. 37):

"Each of the plaintiffs has rights of seniority and seniority rights of a value greatly in excess of Three Thousand Dollars (\$3,000) which would be lost to him or her should he or she persist in

agreement on
of the precise
anson. As we
e many other
nt in this case

refusal to join or maintain membership in or
petitioning labor organizations"

See also: *Pierce v. Society of the Sisters of
Names*, 268 U. S. 510, 536 (1925).

s one contract.
application to
It is a single
effectiveness de-
y laws (judge-
the Southern
al action ques-
et of this case
e relief sought
his residence,
rk law.

Appellants further assert that there is no other
that could furnish any ground for injunctive relief
avoidance of a multiplicity of actions of itself
ground for injunctive relief (Georgia Code Sec.
104). The finding that appellants would continue
complained-of acts (R. 104) is a finding that a multiplicity
of actions would be involved and is adequate for
injunctive relief.

aph 8 of the
tion II of this

Appellants complain of the inclusion of the individual
defendants in the injunction (brief, pp. 87-90).
discussion at pp. 47a-49a above concerning these individuals.

whether ir-
ge the amount
each employee
n, those dam-
much greater.
lues—i.e., loss
e union appel-

We see no need for discussion of appellants' complaint
(pp. 98-99) with respect to the proviso in the decree
mitting its reopening. The proviso does them no harm.
We have already covered their complaint with respect to
the substantial relief granted by the decree.

of employment
y in excess of
would be lost
in his or her

Brief, pp. 99-100. Appellants also complain that the
trial court erred in awarding damages to certain
individual appellees because they could have avoided the
damage by posting a bond. While it is true that one can
minimize damages, this rule does not require one to post
a bond. On the contrary, the appellants could have avoided
such damages by not compelling the individual appellees
to pay union dues pending this litigation. They are in a
position to complain. The money they have borrowed from
the individual appellees who paid it as dues. They are
suffers no damage in simply returning it. The statement
negatives the idea of voluntary payments suggested by
appellants (R. 203, 204).

It is clear from the above that the unions were denied due process by the trial court's order.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1959.

INTERNATIONAL ASSOCIATION OF MACHINISTS, P.
Appellants

v.

S. B. STREET, ET AL., *Appellees*

On Appeal From the Supreme Court of Georgia

APPELLANTS' REPLY BRIEF

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1959

No. 258

INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL.,
Appellants

v.

S. B. STREET, ET AL., *Appellees*

On Appeal From the Supreme Court of Georgia

APPELLANTS' REPLY BRIEF

Almost all the arguments made by the individual appellees are fully refuted in our main brief. We believe all their arguments are obviously fallacious. We will comment here only on the arguments on which they appear to place their principal reliance or which were not made in the courts below and not fully discussed in our main brief. We pass over the numerous inaccuracies in purportedly factual statements for which the individual appellees cite no record reference or cite only allegations in the complaint.

I. The Applicability of the Hanson Case

The individual appellees say (p. 20, see also that in *Railway Employees' Dept. v. Hanson*, 3225, this Court "made clear that it was ruled that a railroad employee could be required to contribute a fair share of the cost of collective bargaining". Their quotations from that case on this point and the following page refute that statement. It was support of the collective bargaining agreement, not the cost of "collective bargaining", that was at issue.

They say that this Court did not have before it in *Hanson* the fact that these unions engage in activities in the legislative and political fields. This is our demonstration to the contrary on pages 3 and 4 of our main brief. It is unnecessary to point out the exaggerated nature of some of appellees' statements attempting to make factual distinctions between this case and the *Hanson* case. It should be pointed out that this Court reversed the Supreme Court of Nebraska for holding section 2, 1 of the Railway Labor Act and agreements made pursuant thereto invalid not because there was insufficient evidence to sustain that Court's finding that the unions engage in activities other than collective bargaining but because such circumstance was irrelevant to the restrictions in the Act (copied into the agreement) on the type of union-shop agreement that was permitted and entered into.

II. The Presence and Significance of "Government"

The individual appellees argue at great length that the union-shop agreements are brought about by "government action" and seem to assume that the validity or invalidity of the agreements and section 2, 1

of the Railway Labor Act is determined by a litmus-paper test of the presence or absence of "government action". This aspect of the case appears to have degenerated into an argument over labels with a studious avoidance of substantive content. Before adverting to specific arguments, we think some general observations will clarify the issues.

Unquestionably, the enactment of section 2, Eleventh was government action. If a competent branch of the federal government had not enacted it, repealing the prior federal prohibition of a union-shop and bringing into play the Supremacy Clause by declaring the federal intention to occupy the field, we would not have a case.

But there are all kinds of "government action". If Congress should enact a statute prescribing rates of pay for various employees on locomotives at a stated number of dollars per 100 miles in freight service or 150 miles in passenger service, or eight hours, whichever is sooner, with various differentials dependent on "weight on drivers", and with other differentials applicable to "short turnaround service", very different constitutional questions would be applicable to the determination of the validity of rates of pay so fixed than would be applicable to the determination of the validity of such rates of pay prescribed in a collective bargaining agreement entered into by a collective bargaining representative certified as such under an Act of Congress. Similarly, the validity of the union-shop agreements here involved is not determined by the same tests as would be applicable if Congress enacted a statute imposing as a condition of employment on a railroad that an employee join a union that spends part of its funds

in efforts to influence legislation or politics or if Congress enacted a statute imposing condition of appellees' continued employment to join the Brotherhood of Railway Clerks.

The questions would be different because "government action" would be different. We must look at the nature of the government action, what the government did, and not just its label, to determine its validity. Here Congress repealed in part the prohibition of a union-shop on the railroad, which in effect preempted the application of state law to the validity of such agreements. It is very clear that state law had already been excluded from consideration in this field. In 1926 when the Railway Labor Act was first enacted, and again in 1934 when it was rewritten, Congress institutionalized and gave form to the collective bargaining practices that had developed in the railroad industry. It also prohibited the non-union shop. State law was probably thereby excluded from this field. In 1951 Congress repealed in part the prohibition of a union shop. That is all the government action that we have here, on the facts of this case.

With respect to the alleged executive "government action", it must be unnecessary to refute the claim that the union-shop agreement "was encouraged, virtually dictated by governmental agencies" (see pp. 14-15, 58-61) because of the activities of the National Mediation Board and the Emergency Railway Labor Board. If there was dictation, it was rather ineffectual. It was a full year after the report of the Emergency Railway Labor Board before the unions were able to obtain a union-shop agreement from the Southern Railway. The agreement they did obtain was substantially

able than the recommendation of the Emergency Board. And it is utter nonsense to argue that the validity of a collective bargaining agreement is determined by different standards when it is reached without mediation than when it is reached after mediation.

The effort of the individual appellees (pp. 61-2) to rely on *Shelley v. Kraemer*, 334 U.S. 1, to find judicial government action is wholly misplaced for a variety of reasons. It is enough to point out that in this case such issue is entirely academic; no one has asked any court to enforce any agreement.

III. The Record Presents No Issues of Infringement of First Amendment Rights

A major segment of the brief of the individual appellees (pp. 61-106) is devoted to arguing that section 2, Eleventh and the union-shop agreement deprive them of First Amendment rights such as freedom of speech and freedom of the press. The entire discussion consists of pure fantasy.

Their argument appears to take two directions.

The first is predicated upon some astonishing "reasoning" of the court below, the Supreme Court of Georgia. It proceeds something as follows: The AFL-CIO sponsors some radio programs, or presents testimony to Congressional committees, espousing views with which the individual appellees disagree. The AFL-CIO derives its principal revenues from the five-cents per capita from affiliated unions, including the appellant unions to one of which the individual appellees would pay dues under the union-shop agreement. Thus what is said on those programs or in such testimony is said in part by means of appellees'

dues. Thus the appellees are deprived of speech because, as the Supreme Court of Georgia said in *Whitney v. California*, "one who is compelled to contribute the fruits of his labor to support or promote [such activities] is much deprived of his freedom of speech as if he were compelled to give his vocal support to those whom he opposes". R. 269. The reason this is so, is that "There is a common saying that 'Money makes men'". Probably this "reasoning" requires no refutation than its description. Its nature becomes apparent when we reflect that the Government by the direct exercise of its coercive power of taxation exacts money some of which is used for such activities as Voice of America and the armed forces. It has never to our knowledge been suggested that such expenditures by the Government violate First Amendment rights of taxpayers who are isolationists or atheists.

The second approach to showing that appellees' First Amendment rights are infringed has no support whatever in the record. They say, based on pure conjecture, that the appellees are inhibited from expressing their views vocally or by resort to the press because the knowledge that part of "their" money ultimately can be traced to the financing of the expression of views by the defendant unions or the government vocally or through the press, makes them believe it is futile for them to speak or print their views and this is the result of Congress having enacted Section 2, Eleventh. Whether or not this is a valid psychological analysis need not be determined. It is an argument advanced for the first time in this case and there is no evidence of any kind on the subject. There is no indication that any appellee or

of freedom of Georgia held, fruits of his [ies] is just as as if he were doctrines he o, they say, is 'Money talks quires no furts far-fetched flect that the coercive power h is spent in chaplains for knowledge been e Government ayers who are

appellees' First support what- psychological ted in express- the press be- "money ulti- the expression the AFL-CIO. em feel that it eir own views, ng enacted sec- is is a sound terminated; it is e in this Court. ne subject, and or anyone else

has been in fact psychologically inhibited by the u shop from expressing any views he pleased in manner he pleased. We think worth quoting the Supreme Court of Wisconsin on the question of the integrated bar (5 Wis. 2d 618, 623; see pp. of our main brief):

"The integrated Bar does not destroy either independence of the Bar or of the individual lawyers. The State Bar of Wisconsin was not intended to control and there is no evidence or information that it has controlled or attempted to control the thinking of any of its members. The State Bar Association of Wisconsin through its Board of Governors, an elected representative policy-making body, duly decides a policy within its province on behalf of the State Bar even if it understands or should understand the policy in the name of the State Bar as an entity separate and distinct from each individual. Such pronouncement by the State Bar does not necessarily mean that all of its members agree with that pronouncement nor is it necessary for them to do so. Individual members are free to think and to express their own opinions. But it is the nature of a representative democratic organization that the elected representatives of the group speak for it in accordance with its organic laws.

The appellees rely heavily on the dissenting opinion in *Public Utilities Commission v. Pollak*, 343 U.S. 369, to support their contention of infringement of First Amendment rights. (Brief, pp. 69, 77, 88-90, 97.) Assuming that opinion to be sound law, there is a critical difference between that case and this. In that case the riders of Washington's busses were free to listen or not to listen to the radio program as they rode on busses. In this case appellees are trammelled in their choice of listening or not list-

to the AFL-CIO radio programs and in of reading or not reading union publica

In the *Hanson* case this Court found no record to raise First Amendment issues nothing in the record in this case that was in the *Hanson* case to raise such issues.

IV. There Is No Infringement of Fifth Amend

This was specifically held in the *Hanson* only intimation in that case that any First Amendment question was left open for determination. A possibly different record is the sentence (235):

“If ‘assessments’ are in fact imposed upon persons not germane to collective bargaining, a different problem would be presented.”

It is apparent from the context that the term “assessments” was carefully and precisely used to make a distinction to “fines and penalties” on the one hand and “periodic dues, initiation fees” on the other. It is clear that this caveat was generated by the “ban” on the union to levy assessments for unspecified purposes retained in certain union constitutions and referred to in footnote 7. The present record contains no evidence that any appellant has ever been subjected to an assessment for any purpose.

* The statements on pages 93-95 of appellees’ briefs, which stated amounts that members of various of the departments “must pay” for “subscriptions” to union magazines to retain their jobs, are highly misleading. The record shows only that the unions have monthly publications. In some instances certain amounts are set aside out of dues to sustain such publications and in other instances the price to non-members is shown.

V. Matters of State Law

The individual appellees contend that certain procedural questions raised by appellants, and the validity of a union shop in the railroad industry under Georgia law apart from section 2, Eleventh, are matters of state law conclusively determined by the court below. We recognize that this Court has repeatedly held that determinations of state law by state courts are conclusive on such questions, but subject to the right of litigants to due process and equal protection under the Federal Constitution. Points II, VIII, and Appendix A of our main brief (pp. 22-25, 87-100, 102-109) set forth such arbitrary, discriminatory, and capricious applications of state law in this case as to deny appellees due process and equal protection rights under the Federal Constitution. We remind the Court of the substance of its decision of March 21, 1960 in *Thompson v. City of Louisville*, No. 59, October Term, 1959, 350 U.S. 195, 161 Law Week 4193, to these issues.

Respectfully submitted,

MILTON KRAMER
LESTER P. SCHOENE

SCHOENE AND KRAMER
1625 K Street, N. W.
Washington 6, D. C.

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No. 4

In the Supreme Court of the United States

OCTOBER TERM, 1960

INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL.,
APPELLANTS

v.

S. B. STREET, ET AL.

ON APPEAL FROM THE SUPREME COURT OF THE STATE
OF GEORGIA

PETITION OF THE UNITED STATES FOR INTERVENTION

J. LEE RANKIN,

Solicitor General,

Department of Justice, Washington 25, D.C.

In the Supreme Court of the United States

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S. B. STREET, ET AL.

**ON APPEAL FROM THE SUPREME COURT OF THE STATE
OF GEORGIA**

PETITION OF THE UNITED STATES FOR INTERVENTION

On June 20, 1960, this Court certified to the Attorney General of the United States that the constitutionality of § 2 Eleventh of the Railway Labor Act, 45 U.S.C. § 152 Eleventh, an Act of Congress affecting the public interest, is drawn in question in this cause.

The Solicitor General, on behalf of the United States, prays that an order be entered permitting the United States to intervene and become a party for the

purpose of filing a brief and presenting oral argument, pursuant to 28 U.S.C. 2403.*

Respectfully submitted.

J. LEE RANKIN,
Solicitor General

SEPTEMBER 1960.

* This short-form petition for intervention follows that filed by Solicitor General Jackson, at the 1938 Term, in *Loomis First Federal Savings and Loan Association*, No. 277, 380 U.S. 1029 (1964), 1938 Term 1938 (see 305 U.S. 562, 566).

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GEORGIA**

BRIEF FOR THE UNITED STATES

J. LEE RANKIN,

Solicitor General,

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Argument	
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A. The disputed political and legislative ex- penditures cover a broad spectrum of activities, and at least some of them raise delicate constitutional issues	
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Argument—Continued**I. The parties, etc.—Continued**

- B. Because of the nature of the dispute sought by appellees, this Court has no forum of political and legislative expenditures and activities treated alike by the courts by the parties in this Court. Differing considerations may be applied to the various classes of expenditures and activities.

II. Section 2, Eleventh, of the Railway Labor Act is constitutional, whether or not the expenditures are constitutional.

- A. This Court has sustained the constitutionality of Section 2, Eleventh, and the general validity of union agreements made pursuant to it.

- B. The unlawful expenditure of money collected under a union shop agreement would not invalidate Section 2, Eleventh, or necessarily invalidate the agreement.

III. Appellees cannot and should not obtain an injunction against enforcement of the union agreements, whether or not the expenditures are constitutional.

IV. Remedies are available to protect the rights of appellees have asserted.

- A. Injunction against the expenditure of money for disputed purposes of funds collected from appellees' fees and dues.

- B. Other possible remedies.

V. The Court should not decide in this case the constitutionality or legality of the expenditures and activities.

Conclusion

CITATIONS

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- Allen v. Southern Ry. Co.*, 249 N.C. 491, 107 S. E. 2d 125
- Amalgamated Society of Railway Servants v. Osborne* [1910] A.C. 87
- Ashwander v. Tennessee Valley Authority*, 297 U.S. 288
- Bowe v. Secretary of the Commonwealth*, 320 Mass. 230, 69 N.E. 2d 115
- Brotherhood of R.R. Trainmen v. Howard*, 343 U.S. 768
- Burton v. United States*, 196 U.S. 283
- Calder v. Bull*, 3 Dall. 386
- Conley v. Gibson*, 355 U.S. 41
- Crowell v. Benson*, 285 U.S. 22
- Cunningham v. Erie Railroad*, 266 F. 2d 411
- Dartmouth College v. Woodward*, 4 Wheat. 518
- De Mille v. American Federation of Radio Artists*, 31 Cal. 2d 139, 187 P. 2d 769, certiorari denied, 333 U.S. 876
- Greene v. McElroy*, 360 U.S. 474
- Hudson v. Atlantic Coast Line R.*, 242 N.C. 650, 89 S.E. 2d 441
- Lathrop v. Donohue*, 10 Wis. 2d 230, 102 N.W. 2d 404 pending on appeal, No. 200, October Term, 1960
- Lincoln Federal Labor Union, et al. v. Northwestern Iron & Metal Co., et al.*, 335 U.S. 525
- Liverpool, N.Y. & P.S.S. Co. v. Emigration Commissioners*, 113 U.S. 33
- Looper, et al. v. Georgia Southern & Florida Railway Co., et al.*, 213 Ga. 279, 99 S.E. 2d 101
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ON APPEAL FROM THE SUPREME COURT OF THE STATE OF
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BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the Supreme Court of Georgia (R. 249-270) is reported at 215 Ga. 27, 108 S.E. 2d 796. An earlier opinion by that court in this case is reported *sub. nom. Looper, et al. v. Georgia Southern & Florida Railway Co., et al.*, at 213 Ga. 279, 99 S.E. 2d 101. The "findings, conclusions, order, judgment and decree" of the trial court (R. 101-107) are not reported.

JURISDICTION

The judgment of Supreme Court of Georgia holding Section 2, Eleventh, of the Railway Labor Act

unconstitutional, was entered on June 5, 1959. Probable jurisdiction was noted by this Court on November 12, 1959 (R. 271, 276). The jurisdiction of this Court rests upon 28 U.S.C. 1257(1) and 1257(2).

QUESTIONS PRESENTED

1. Whether Section 2, Eleventh, of the Railway Labor Act, and the union shop agreements which it authorizes, are in violation of the First or Fifth Amendments to the Federal Constitution.

2. Whether the legality and constitutional validity of union expenditures for political, educational, and ideological purposes are properly presented on this record in this Court in appellees' action to enjoin the enforcement of union shop agreements made pursuant to Section 2, Eleventh, of the Railway Labor Act.

3. Whether the operation of union shop agreements made under Section 2, Eleventh, of the Railway Labor Act should be enjoined in this action because of the expenditures made by the unions may be unconstitutional.

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

1. The pertinent Amendments to the Constitution of the United States provide:

AMENDMENT I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the free speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

2. Section 2, Eleventh, of the Railway Labor Act, as amended by the Act of January 10, 1951 (64 Stat. 1238), 45 U.S.C. 152, Eleventh, provides in pertinent part:

UNION SECURITY AGREEMENTS; CHECK-OFF

Eleventh. Notwithstanding any other provisions of this chapter, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this chapter and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this chapter shall be permitted—

(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the

labor organization representing the
or class: *Provided*, That no such a
shall require such condition of em
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(b) to make agreements prov
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of such employees, of any periodic
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taining membership; *Provided*:
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respect to any individual empl
he shall have furnished the empl
a written assignment to the labor
tion of such membership dues,
fees, and assessments, which sha
ocable in writing after the expi
one year or upon the termination
the applicable collective agreeme
ever occurs sooner.

(d) Any provisions in paragraphs Fourth and Fifth of this section in conflict herewith are to the extent of such conflict amended.

STATEMENT

This suit was brought by several employees of the Southern Railway system¹ to enjoin the enforcement of two union shop agreements entered into between that railroad and the unions representing its non-operating employees, pursuant to Section 2, Eleventh, of the Railway Labor Act. The suit sought to have the union shop agreements declared void and Section 2, Eleventh, declared unconstitutional.

1. *Preliminary proceedings.*

This action was filed on June 5, 1953, in the Superior Court of Bibb County, Georgia, less than 60 days after the union shop agreements took effect. Plaintiffs were eight non-union employees of the Southern Railway system (R. 4-5). The unions, which had entered into the union shop agreements and their officers, and the nine individual companies constituting the Southern Railway system, were named as party defendants. The petition asserted that the union shop agreements violated plaintiffs' rights to work and to contract, and therefore deprived them of property without due process of law in violation of the Fifth and Fourteenth Amendments and applicable provisions of Georgia law. No allegations were made concerning the expenditure of union funds for political,

¹ Sometimes referred to as "the railroad."

legislative or ideological purposes, and of First Amendment rights was asserted. Plaintiffs sought a permanent injunction against defendants from enforcing the terms of the agreements, and a declaration that the agreements were void and unconstitutional (R. 14). Non-union employees intervened as parties (R. 15-17). The petition was then amended to a class action on behalf of others "similarly situated" (R. 18).

Upon petition by the unions, the case was removed into the federal district court on the grounds that it involved federal questions and that the amount in controversy was in excess of \$3,000 (R. 31-32). In 1953, the railroad and the plaintiffs moved for summary judgment. The case was remanded to the state court, asserting that the cause of action was not founded upon a claim arising under the Constitution or laws of the United States and that there was no independent federal question against the unions which would be removed to the federal court upon alone (R. 48, 53-54, 56).

On January 8, 1957, following the decision of the Court in *Railway Employees' Dept. v. Wotson*, 354 U.S. 225, the federal district court remanded the case to the state court, with the consent of the parties (R. 57-8). The unions moved to dismiss, and the railroad moved to amend the petition by alleging that the dues and fees which they would have to pay under the union shop agreements "will be used in part for purposes not germane to collective bargaining but to support ideological and political

and no violation
 ted (R. 8-14).
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and candidates which plaintiffs are not willing to
 port", in violation of the First, Fifth, and
 Amendments to the federal constitution (R. 59).
 No change was made in the prayers for relief.
 court treated the motion to dismiss as directed to
 petition as amended, and granted the motion
 221). Upon appeal, the Supreme Court of Georgia
 holding that the petition stated a cause of action
 reversed and remanded. *Looper, et al. v. Georgia
 Southern & Florida Railway Co., et al.*, 213
 279, 99 S.E. 2d 101.

Upon remand, the unions promptly filed their
 swer. Plaintiffs objected to the filing of the answer
 on the ground that it was untimely, not having been
 filed at the time of the motion to dismiss. Apparently
 the trial court announced orally that the objection was
 well taken, but no written order was entered.

On May 8, 1958, the trial court granted the plaintiffs
 a broad discovery order which required the unions to
 produce all their books, records, correspondence, and
 papers "showing or related to monies paid by the
 members to each of the respective organizations and
 affiliates thereof and the purposes for which monies
 * * * were or are being expended" (R. 65).

On August 14, 1958, plaintiffs, the unions and the
 railroad entered into a stipulation of facts which was
 designed to constitute the primary evidence on the issues
 and to eliminate the necessity of further discovery.
 (R. 153-217).

On September 23, 1958, plaintiffs filed a "Fourth
 Amendment to Petition" (R. 71-84). This amendment

ment reduced the number of plaintiffs to more detailed allegations concerning the expenditure of funds for "ideological" and purposes, and for the first time requested prayer for relief, that the Railway Labor Board declared unconstitutional "to the extent that it permits union expenditures from dues, fees and assessments for "purposes, not germane to conducting the business of the union, and for the purpose of gaining * * * contrary to the constitution of the United States" * * * The amendments also contained a prayer for compensatory damages and for "such other and further relief * * * as may be necessary" to protect the plaintiffs' rights.

By a pre-trial order of November 1, 1954, the court accepted the stipulation, permitted the plaintiffs to withdraw their objections to the answer, and allowed the plaintiffs' fourth amended petition to the petition (R. 98-100).

2. *The evidence.*

The evidence in the voluminous record falls into four distinct categories: (1) the stipulations of facts (R. 165-217); (2) plaintiffs' testimony for admissions and the unions' answers (Tr. 1049-75); (3) the depositions of official witnesses and organizations with which the union is affiliated (R. 108-152); and (4) various documents, periodicals of the unions tending to show activities and expenditures in political and social affairs. The pertinent facts are not in dispute.

The union shop agreements provide that employees of the railroad who are

to six, inserted the unions' ex- and "political" requested, in the labor Act be de- t that" it per- fees and assess- collective bar- titutional rights esent" (R. 83). ayer for mone- and further re- protect plaintiffs' r 10, 1958, the tted the plain- the unions' an- rth amendment

ord in this case the stipulation three requests rs (R. 277-323; fficials of politi- nions are asso- documents and show union ac- and legislative in dispute. de in substance are represented

by unions shall, as a condition to continued em- ment, become members of the union represe- their class or craft within 60 days of the effe- date of the agreement or within 60 days of the- ployment, and maintain that membership (R. 206). The only requirement for membership u- the agreements is tender of the periodic dues, i- tion fees and assessments (not including fines- penalties) which are uniformly required of al- ployees in the same status at the same time and i- same union unit, as a condition of acquiring o- taining membership. Membership is not requir- an employee unless it is available to him upon- same terms and conditions which are applicab- all other members (R. 207-208). The agree- establish a system of notice, hearing, and appea- union members in violation (R. 208-213). The a- ments, which specify that they shall be constru- separate agreements between each company and- union, were executed in Washington, D.C. in- ruary 1953, to become effective on April 15, 195- 214).

The initiation fees required range from \$5 to- and the dues from \$2 to \$6.75 per month' (R. 174). There is no indication of periodic assess- required as a condition of continued union me- ship. "A substantial portion" of the procee- such fees and dues are retained by the local lodg-

²The National Marine Engineers and the International Union of Marine and Shipbuilding Workers, which represents a few employees of the railroad, have higher dues (\$10 per month, and \$25 per quarter) and initiation fees—up to \$100 (R. 172, 174).

the unions, and are used to support legislation in the state legislatures, including legislation more than that "involving the negotiation, management, and administration" of collective bargaining agreements, wages and hours, or labor disputes (R. 176-7).

"A substantial proportion" of the funds collected by the local lodges is transferred to the national organization of appellant unions (R. 177). Many of the unions maintain separate funds from the proceeds of such fees and assessments (R. 132, R. 178). Each of the national unions pays a month per member to the American Labor and Congress of Industrial Organizations (R. 124, R. 178). The annual amounts of contributions of each of the appellant unions ranges from \$452,214 (R. 318, 322). The AFL-CIO makes expenditures of more than \$350,000 annually in operation of its Committee on Political Education (COPE), expenditures of up to \$139,000 for legislative activities, and expenditures of \$100,000 annually for its Civil Rights Committee. The Committee on Political Education of the AFL-CIO made numerous contributions to campaigns of political candidates for federal office, not from funds derived from general dues, but from the AFL-CIO (R. 277-299, 315, 141-144). The AFL-CIO also makes contributions of \$25,000 annually to several labor and community organizations (R. 320). Several of the appellant unions are also officers or members of committees or councils of the AFL-CIO.

legislative activity
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 IO (R. 321, 323).

The Railway Labor Executives' Association con-
 of the chief executives of the appellant unions and
 the operating railway brotherhoods (Stip. ¶ 23,
 179). "A principal activity" of this Association
 in connection with federal legislation. The As-
 tion is financed through assessments on its member
 unions, ranging from less than \$200 to \$34,000 annu-
 which are paid from the general dues funds of
 unions (Stip. ¶¶ 26 and 27, R. 179-181).

Railway Labor's Political League (RLPL), a
 ganization made up of the officers of appellant u-
 and several of the operating brotherhoods, was fo-
 for the purpose of engaging in political activity (¶
 ¶ 28 and 29, R. 182). The League has an "edu-
 tional" fund and a "free" fund. The educational
 is used for administrative expenses, for publicity
 miscellaneous activities tending to influence vot-
 national, state and local elections, and to support
 didates for public office at the state and local
 except in those states which prohibit such sup-
 The educational fund of the League sometimes re-
 periodic contributions from the general dues f-
 of several member unions, but its principal fina-
 support is from the Railway Labor Executives'
 ciation (Stip. ¶¶ 29 and 30, R. 182-184). The
 fund of the League, from which contributions
 made to the campaigns of candidates for nat-
 office, consists of the receipts of individual volu-
 contributions to that fund from members of app-
 unions and others. The contributions are collect-
 officers of the League, who are also officers of son-

the appellant unions; and officers of the appellant unions urge their members to contribute to the free fund of the League (Stip. ¶¶ 31-33, R. 184-185). The League has supported the Democratic National Committee and Democratic candidates for President and for the United States Senate, and has supported more Democratic than Republican candidates for Congress (Stip. ¶¶ 34-42, R. 186-187). Appellant International Association of Machinists has a "political organ" called the Machinists Non-Partisan Political League, which operates in a manner similar to that of Railway Labor's Political League (Stip. ¶¶ 58-75, R. 192-197):

Thirteen of fifteen appellant unions are part owners of the society which publishes the weekly newspaper "Labor" (Stip. ¶ 46, R. 189). "Labor" derives its financial support primarily from subscriptions. The appellant unions (with one exception) buy subscriptions "for officers and members" of the unions, and these subscriptions constitute "a substantial portion" of "Labor's" revenues (Stip. ¶¶ 47-48, R. 189). Portions of "Labor" are devoted to legislative and political subjects, and "Labor" tries to influence its readers to support its political philosophy and to contribute to Railway Labor's Political League and COPE (Stip. ¶¶ 47-51, R. 189-190). During elections, "Labor" publishes special editions featuring the candidates it supports, and distributes them to non-subscribing members of appellant unions and to members of the general public as well as to subscribers (Stip. ¶ 52, R. 190-191). Each of the appellant unions also publishes a monthly journal which at

tempts to influence its readers in the same manner as does "Labor", except the journals apparently do not publish special editions supporting political candidates (Stip. ¶ 50, R. 189-190). These periodicals are published in the regular course of the unions' business, and the costs of publication and distribution are paid for from general dues funds (Stip. ¶ 79, R. 198-199).

The six individual appellees are employed by the railroad in positions covered by the union shop agreements. Three of them have filed supersedeas bonds, and the agreements have been enjoined as to them. The other three have, as a condition of continued employment, been obliged to join the Brotherhood of Railway Clerks,¹ and to pay the regular dues and fees (Stip. ¶¶ 80-85, R. 202-5). The individual appellees fairly represent the position of "the substantial number" of other employees of the railroad who have been compelled to join appellant unions, or whose employment has been terminated, by virtue of the union shop agreement and who object to the use of their money for the disputed purposes (Stip. ¶¶ 5-7, R. 166-7). Appellees object to the use of their dues and fees for the "political activities" described above, and oppose and disagree with the political doctrines and candidates and legislative programs supported by appellant unions, and object to the use of their money for "purposes other than the negotiation, maintenance and administration" of collective bargaining.

¹ Apparently, the three who have not joined any union are also members of the class represented by this union, although the record does not indicate what positions they hold (see Appellant's Brief, p. 7).

agreements and disputes relating to them (Stip. ¶ 44, R. 188). The funds expended by appellant unions for political activities and other purposes to which appellees object are "substantial," and constitute a "substantial" proportion of the periodic dues, fees and assessments required of individual appellees under the union shop agreement (Stip. ¶ 43, R. 187-8).

One deficiency in the record for the purposes of adjudication by this Court is that the record does not reveal the number of employees of the railroad who voluntarily joined appellant unions or the number who would be required to join under the terms of the union shop agreement.⁴ Nor is there any indication (other than the word "substantial") of the number of employees who object to union membership because of the unions' use of general dues funds for legislative and political purposes, or the crafts or classifications to which they belong, or the states within which they reside or work. There is a similar lack of evidence concerning the proportion of appellants' general dues funds used for legislative and political purposes.⁵ Nor is there any evidence concerning the feasibility of segregating the dues and fees of individual appellees, and other dissenters, so that their money would not be used for political and legislative purposes—assuming, of course, that such segregation was necessary or desirable.

⁴ The legislative history of Section 2, Eleventh, of the Act indicates that, at the time of its enactment, approximately 75 to 80% of all the employees of all the railroads in the United States were voluntary union members. See *Railway Employees' Dept. v. Hanson*, 351 U.S. 225, 231.

⁵ The record indicates only that it is "substantial."

3. *The findings and decree.*

Based primarily upon the stipulation, the trial court found that appellant unions would expend the dues and fees of appellees in substantial amounts (1) in political campaigns, (2) to propagate political and economic doctrines and legislative programs, and (3) to "impose * * * conformity" upon appellees and the general public to the doctrines which appellant unions advocate (Findings 5 and 6, R. 103). The court also found that the use of appellees' fees and dues "is not reasonably necessary to collective bargaining or to maintaining the existence and position of said union defendants as effective bargaining agents or to inform the employees whom said defendants represent of developments of mutual interest" (Finding 7, R. 103). It also found that the commingling of funds by the unions made it impossible to segregate the amount of dues already collected from the individual appellees (Findings 8, 10, R. 104).^{*} The court then concluded that the "exaction and use" of appellees' money, and the union shop agreements authorizing them, violate the First, Fifth, Ninth, and Tenth Amendments to the Constitution, as well as the law and public policy of Georgia. There was no finding, or contention, that the expenditures for legislative and political purposes violated the Federal Corrupt Practices Act (18 U.S.C. 610), other federal legislation, or state legislation, or that they were improper under the unions' constitutions and by laws. There was also no express finding that the expenditures themselves were not germane to the legitimate purposes of the unions.

^{*}There was no comparable finding about the possibility of segregating the dues to be collected from appellees in the future.

By way of relief, the court enjoined the enforcement of the union shop agreements, declared Section 2, Eleventh, unconstitutional, declared the shop agreements null and void, and awarded damages of \$133.50, \$151.50, and \$158.25 to the appellees who had not filed supersedeas bonds (105-6). The court provided that the unions could at any time seek to dissolve the injunction upon a showing that "they no longer are engaging in the proper and unlawful activities described above (106)."

4. *The appellate proceedings.*

The Supreme Court of Georgia affirmed, with modification of the findings or order of the trial court. Probable jurisdiction was noted by this Court on October 12, 1959, and the cause was briefed and argument had on behalf of appellants and appellees. Rehearing was ordered on June 20, 1960 (363 S.E.2d 825).

In the same order, the Court certified to the Attorney General that the constitutionality of Section Eleventh, of the Railway Labor Act is drawn in question in this case. Upon a petition of the United States for intervention, an order was entered on October 10, 1960, permitting the United States to intervene and become a party, pursuant to 28 U.S.C.

SUMMARY OF ARGUMENT

Unlike the original parties, we do not believe the Court need or should decide in this case the

'A reading of the decree and order does not reveal whether the unions' activities were considered unlawful.

ity of the various disputed expenditures. We think it appropriate for the Court (a) to reaffirm the general constitutionality of Section 2, Eleventh, of the Railway Labor Act, and of the union shop agreements made pursuant thereto; as well as for the Court (b) to hold that, regardless of the legality of the challenged expenditures, appellees are not entitled to the particular relief sought and obtained below, *i.e.*, an injunction against enforcement and operation of the union shop agreement itself. We submit that appellees have other remedies—either on remand, together with amendment of the complaint and prayer to enjoin use of monies paid by them for the purposes to which they object, or in a new suit—if they desire to test the validity of the expenditures they attack.

I .

A broad spectrum of constitutional questions, some of them quite delicate, have been tendered for decision in this case. The appellees contend that the exaction, under sanction of the Railway Labor Act and the union shop agreements, of fees and dues from them which will be expended by appellant unions in substantial part to promote political and legislative programs, policies, and candidates which appellees oppose, violates their constitutional rights not to have their money used to speak against their own beliefs. Appellant unions contend that they are private organizations and can thus spend their dues for any purpose they see fit, if in accordance with their con-

stitutions and bylaws, and federal and state. At any rate, they argue, all of their expenditures are germane to collective bargaining.

Numerous union activities and expenditures of different kinds are thus drawn in question. From testimony by union officials before the Senate committees, and solicitation at union meetings, voluntary contributions to political organizations, the use of union funds for political campaigns, the endorsement of political candidates by union newspapers, their periodicals, to "interpretive" and "educative" news articles by such journals; from support of legislation concerning wages, hours, and working conditions, to support of legislation concerning housing, farm programs and foreign aid, the legislative activities and expenditures of the union lodge, to legislative and political activities of the union, expenditures by the AFL-CIO.

These different kinds of expenditures and activities in dispute may well involve differing considerations. For instance, support of legislation concerning wages and hours might be considered more "germane" to collective bargaining than support of legislation involving farm programs; and the majority of union members may have an interest in associating with the union to publish their views in a newspaper, while the union may be entitled to greater protection than the individual in having the union render financial aid in the campaign of a particular political candidate.

and state statutes. Expenditures are expenditures of disson. They range before legislative meetings of volunizations, to the sains; from the by unions and and "non-object from union sup hours, and work on pertaining to aid; and from es by the local ivities and ex es and activities g considerations. concerning wages e "germane" to f legislation in rity of the union ociating together r, which interest than their inter ncial support to l candidate.

However, since appellees brought this action to validate the union shop agreements and Section Eleventh, of the Railway Labor Act, instead of confining their attack to the disputed activities and expenditures, the different kinds of activities and expenditures involved have been treated alike by appellants and appellees and by the courts below, in record and findings, and in the arguments below here. All have been treated alike, without separate consideration of the varying factors which may be involved.

II

Section 2, Eleventh, of the Railway Labor Act, a union shop agreement made thereunder, substantially like the ones at bar, have been held constitutional and valid by this Court. *Railway Employees v. Hanson*, 351 U.S. 225. In the present case the record shows that a substantial part of the dues and fees to be collected from appellees will be expended for disputed legislative and political purposes. Even if those expenditures were illegal, the statute itself would not be invalid. Section 2, Eleventh, does not authorize invalid expenditures. Nor does the statute require that the dues, collected by a union from members forced to join under the union shop agreements, be utilized for the alleged wrongful purposes in violation of the constitutional rights of the members. On the contrary, the statute contains no implied prohibition against union expenditures w

would violate the constitutional or other appellees or other dissenters. The nature of the expenditures therefore does not affect the constitutionality or validity of the statute itself. Whether any or all of the disputed expenditures are covered by Section 2, Eleventh, is valid and constitutional. Union shop agreements are also valid on their face and in general, even though particular expenditures may be illegal.

III

Since the statute is valid and the agreement is wise and valid on its face, appellees are not entitled to obtain the particular relief which they sought. The relief obtained below, i.e., an injunction against enforcement and operation of the union shop agreement, is not warranted. This remedy unnecessarily infringes upon the legitimate interests of the majority of the union members who wish to associate together in a union shop, and necessarily hinders the expressed Congressional policy of promoting industrial peace in the railroad industry through industrial self-government by the workers and through elimination of the incentive for "free riders" who receive the benefits of the collective bargaining agency without contributing to it. The granting of such an unnecessarily broad injunction was a reversible error.

IV

Appellees have adequate remedies—which they have not pursued but could pursue on remand.

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the disputed expenditures are illegal. For ex-
a proceeding to enjoin appellant unions from making
expenditures for the disputed purposes from
funds derived from appellees' fees and dues, or
other remedy keyed to a proper appraisal of dis-
expenditures, would be appropriate and adequate
protect the rights asserted by appellees. In addition
to providing a remedy appropriate to the claim as-
serted, such a proceeding would bring sharply into
focus the differing considerations involved in each
kind of disputed expenditure. Possibly there may
also be a remedy under Section 501 of the
Management Reporting and Disclosure Act of 1947.

V

In accordance with the long-established and
founded principle of avoiding constitutional ques-
tions when a decision can be based on other grounds,
the Court should avoid the constitutional question
of the validity of the various expenditures and
reverse the judgments below because the Court
granted a remedy (injunction against enforcement of
the agreement itself) which was broader than necessary
to protect the rights asserted. The decision on the
tendered constitutional questions in this case
be particularly inadvisable at this point because of the
record, the findings, and arguments of counsel. To
together many different kinds of activities, and to
blur the differing considerations.

ARGUMENT

In their briefs and arguments, both original and reply, the appellants have assumed that the Court will and should determine the validity of the various types of expenditures challenged by the appellees. The appellees and their parties also seem to agree that the validity of the union shop provision of the Railway Labor Act, as well as of the union shop agreements themselves, are integrally and necessarily connected with the validity of these disputed expenditures. We take a different view. This is a suit to enjoin enforcement of union shop agreements as such. Our duty is not that—in such a suit and particularly on this appeal—the Court can and should decide that the union shop provision and the agreements are valid or invalid in themselves—without regard to the validity of the various types of expenditures attacked by the appellants. The more need be decided at this time. If the various types of disputed expenditures are illegal, there are other remedies available to the appellees and those who represent them, but the one remedy which is not open, in this case, is totally to enjoin operation of the union shop agreements as a whole. Those agreements should be permitted to operate. At the same time we recognize that the unions do have a responsibility toward their members in taking “political” action, and in making record and a proper request for relief, and we do not demand in the present case or in a new case that certain of the appellants’ expenditures should be found to be illegal as to the appellees whom they represent.

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THE PARTIES HAVE TENDERED THE ISSUE OF THE VALIDITY
OF VARIOUS TYPES OF EXPENDITURES MADE BY
UNIONS, BUT AT LEAST CERTAIN OF THOSE EXPEN-
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OF FAR-REACHING CONSEQUENCE AND NEITHER
SUIT NOR THIS RECORD IS APPROPRIATE FOR THE
RESOLUTION

*A. The disputed political and legislative expenditures cover a
broad spectrum of activities, and at least some of them
involve delicate constitutional issues.*

1. The broad issues tendered by the parties.

Appellees, representing the dissenting minorities of
each of several crafts or classes of the Southern Railway
way system's employees, contend that the appellee
unions violate their constitutional rights by exacting
fees and dues from them under the sanction of govern-
mentally-authorized union shop agreements, for the
purpose of promoting legislative and political pro-
grams, political candidates, and policies to which the
appellees are opposed. They find the requisite "gov-
ernmental action" in the enactment of Section 2, Eleventh
Amendment, which permits union shop agreements in the
railroad industry notwithstanding state law to the
contrary,* and in the grant of other powers to the
unions. They contend that the expenditure of money

* *Railroad Employees' Dept. v. Hanson*, 351 U.S. 225, 16 S.Ct. 513, 76 S.Ct. 1017, 1956. The decision of the Georgia courts below applies not only to the states which prohibit union shop agreements but to every state in which the Southern Railway system operates (R. 105-6). In *Hanson* the Court found federal action in the 17 states in which Section 2, Eleventh Amendment, was necessary to supersede state law.

collected from them for legislative, political and ideological programs to which they object violates their political freedom and their freedom of speech (or, more specifically, their freedom not to have their money used to speak against their own beliefs), and their freedom to be free from ideological conformity. They urge that these freedoms are protected by the Constitution, primarily by the First Amendment. In effect, they concede that none of their constitutional rights would be violated if all of their fees and dues were used for purposes "germane to collective bargaining", but contend that expenditures for political, legislative and ideological purposes are not so "germane". They conclude, as the courts below held, that because their fees and dues have been and will be used "in substantial part" for purposes which are not germane to collective bargaining, they should not have to pay any fees and dues, that enforcement of the union shop agreement should be enjoined, the agreement declared null and void, and Section 2, Eleventh, be declared unconstitutional.

Appellant unions, in contrast, contend that the union shop agreements were valid even without Section 2, Eleventh, and that there is therefore no showing of governmental action. They argue, secondly, that an employee has no constitutionally protected right to work for an employer without having a part of his dues expended for political and legislative purposes with which he disagrees. Thirdly, they contend that, at any rate, all of the political, legislative and educational expenditures shown in the record are primarily

designed to advance the interests of the unions and their members by legislation concerning such matters as retirement and unemployment insurance, safety, sanitation; and that all political activity is intimately related to collective bargaining and its objectives.* It has also been suggested that labor unions have traditionally engaged in political and legislative efforts and that history demonstrates that political and legislative activities by unions are essential to efforts by employees to maintain and improve their bargaining position and engage successfully in collective bargaining (Brief for the AFL-CIO as *amicus curiae*, pp. 14-30).

2. *The disputed political and legislative expenditures cover a broad spectrum of activities.*

The union expenditures and activities in dispute may be divided into several categories.

First. At the local or lodge level, dues are used "to support legislative activity" in the state legislatures pertaining both to labor legislation and to general legislation not directly involving collective bargaining or wages and hours (Stip. ¶ 20, R. 176-7).¹⁰ In addition, except in states which have restrictive legislation, the local units of the unions "extend substan-

* Appellants raise several procedural questions, claiming violation of due process in the Georgia courts. Since the United States intervened in this case because the constitutionality of Section 2, Eleventh, was drawn in question, we do not discuss the procedural questions.

¹⁰ The record contains little evidence as to the precise nature of this legislative activity. We have been unable to determine whether or not it is restricted to testifying before legislative committees and informing the legislatures of the views of the majority of the members of the local units.

tial financial support to candidates for public office at the state and local levels (Stip. ¶ 20, R. 176-7).

Second. In regard to activities by the nation unions themselves, the area of dispute apparently involves primarily around the publication of periodicals and their contents. Each of the appellant unions has a monthly journal which is supported by regular dues and fees, and which publishes, among other things, endorsements of political candidates, voting records of candidates, appeals to register and vote, appeals to contribute to political and other organizations, editorials and editorial comment, and "interpretive" and "non-objective" news articles and stories and cartoons which are designed to influence the reader toward the point of view held by the journal (Stip. ¶¶ 50 and 79, R. 189-90, and 198-9; see, also, record references in appellees' brief, pp. 99-100).

Third. Together with several of the unions representing the operating crafts of railroad employees, appellant unions are part owners of "Labor", a weekly newspaper which derives its principal financial support from subscriptions (Stip. ¶¶ 46, 47, R. 189). Most of the appellant unions (with one exception) purchase subscriptions for their officers and some of their employees from general dues funds (Stip. ¶¶ 49, 52, 189, 190-1). In addition to advocacy of political views in its regular editions, which are similar to the journals of individual appellants, "Labor" publishes

¹¹ The record does not clearly indicate whether these activities are carried on by all of the local units of appellant unions, or merely by some of the local units of some of appellant unions. Compare Stip. ¶ 20 with Stip. ¶ 21, R. 176-7.

special campaign editions featuring one of its favored candidates for office, which it distributes in part to members of the unions who are not subscribers, and to the general public (Stip. ¶ 52, R. 190-1).

Fourth. The executives of appellant unions also attempt to influence federal legislation, as members of the Railway Labor Executives' Association, through "personal contact and persuasion" with Senators and Congressmen (Stip. ¶ 26, R. 179).

Fifth. In addition to their own activities and expenditures at the national level, the appellant unions (or some of them) make contributions out of general dues funds to support organizations such as Railway Labor Executives' Association, Railway Labor's Political League and the Machinists Non-Partisan Political League (Stip. ¶¶ 26, 30, 63, R. 179-80, 183-4, 195). Appellants also support the two political "Leagues" by soliciting and collecting voluntary contributions for them from their members (Stip. ¶¶ 31-33, 65, R. 184-6, 195). The political "Leagues" support candidates for political office by preparing and distributing political literature, transporting voters to the polls and by contributing funds to candidates' campaigns at the State and local level, and, from voluntary contributions, at the national level (Stip. ¶¶ 29, 58, R. 182-3, 192-3).

Sixth. One further category of union activity is in dispute. Each of appellants is a member of the AFL-CIO and pays it a "per capita tax" of 5¢ per month per member (Stip. ¶ 24, R. 178). The AFL-CIO maintains out of general funds a Department of Leg-

islation, consisting in part of five registered lobbyists to promote its legislative program, which includes both matters directly affecting unions and a large range of issues affecting union members and the general public (R. 126-131). In addition, the AFL-CIO contributes to its Committee on Political Education (COPE), which is active on both the national and state levels. COPE's function is similar to that of the Political Leagues described above except that its activities are more comprehensive (R. 141-142).

3. The general nature of the constitutional issues involved in these expenditures.

No extensive discussion is necessary to show that the issues raised by the parties are of great constitutional importance, and, at least in some instances, involve a delicate balancing of legitimate but conflicting interests. On the one side are the interests of the dissenting minority employees, required by the union shop agreement to join the union at the price of continued employment, not to have union money used to advance candidates and causes which they abhor, and to be free of undue influence. This interest was explicitly recognized by the Court in *Hanson*, 351 U.S. at 235-238. On the other side is the Congressional policy, also recognized by the Court, that the expenses of the collective bargaining agency, which represents and brings benefits to all the employees of a given craft or classification, should be borne by all, and the interests of the majority.

the employees to associate together to take lawful action they deem appropriate to advance their organizational goals."¹² "The law balances conflicting 'rights' in many fields, but nowhere is there more controversy over the balancing than in the field of labor law," especially where the interest of the dissenting employee in not paying dues for purposes to which he objects may conflict with the desire of the majority for union security."¹³

The delicacy of the questions involved, the intensity of the feelings aroused, and the need for judicial caution in this area are all strikingly illustrated by the English experience of half a century ago. In 1909, the House of Lords ruled, in effect, that all political activity by unions was *ultra vires* and illegal. *Amalgamated Society of Railway Servants v. Osborne*, [1910] A.C. 87. The House of Lords' decision was unusual in that it went beyond the grounds urged by the parties in argument.¹⁴ Four years after that decision, Parliament, acting under the leadership of

¹² The interest of the majority in establishing a union shop is not constitutionally protected. See *Lincoln Federal Labor Union, et al. v. Northwestern Iron & Metal Co., et al.*, 335 U.S. 525; *American Federation of Labor v. American Sash & Door Co.*, 335 U.S. 538, 542.

¹³ See Editor's Note to Rose, *The Right to Work: It Must Be Supreme Over Union Security*, 35 A.B.A.J. 110.

¹⁴ See Rothchild, *Government Regulation of Trade Unions in Great Britain: II*, 38 Col. L. Rev. 1335, 1356-63, which was cited in *United States v. O.I.O.*, 335 U.S. 106, 149 (concurring opinion), and in *United States v. UAW-CIO*, 352 U.S. 567, 596 (dissenting opinion).

then Home Secretary Winston Churchill, legislation which not only permitted union activity but deprived the courts of jurisdiction in such matters. Trade Union Act of 1913, 2 & 3 c. 30. The Act protected the dissenting member, however, by providing that the dissenting member would, after objecting to the payment of dues for political purposes, be entitled to a deduction of dues, proportionate to the political expenditures.

Moreover, the constitutional issues tend to have broad consequences, and therefore should be decided only on a proper record and in a proper proceeding. Neither union security agreements¹⁸ nor political activities by unions holding such agreements are novel. The Railway Labor Act covers many employees both in the railroad and airline industries; the unions representing railroad employees alone are said to have 1,500,000 members (Tr. 567, p. 1). A decision of the general constitutional question considered would affect all such employees; and, if the appellees are correct¹⁹ that the "governmental activity" in this case is not restricted to the authorization of union shop agreements by the Railway Labor Act notwithstanding state law, the decision here would be applicable to the additional millions of employees

¹⁸ There have been later amendments to this statute. See footnote 32, *infra*.

¹⁹ Such agreements include both the "closed shop" and the "union shop", as well as the "agency shop".

²⁰ Appellees' Brief, pp. 51-62.

by union shop agreements under the Labor Management Relations Act, 1947.¹⁸

B. Because of the nature of the remedy sought by appellees this broad spectrum of political and legislative expenditure and activities has been treated alike by the courts below and by the parties in this Court, although differing considerations may well apply to the various classes of expenditures and activities

Appellees have attacked the activities and expenditures of the unions in a suit to enjoin the enforcement of the union shop agreements, rather than in an action to enjoin the expenditure of monies collected from appellees for the disputed purposes. It is apparently appellees' theory, and that of the courts below, that if any expenditure is made from appellees' fees and dues for purposes which infringe constitutional rights, then the entire union shop agreement is illegal and Section 2, Eleventh, is unconstitutional. The stipulation of facts was apparently drafted in accordance with this theory, and the record, as well as the findings of fact and conclusions of law, are consistent with it. Appellants, apparently without taking specific exception to appellees' premise, have contended that none of the

¹⁸The Department of Labor estimates that 74 percent, or 5.5 million, of the 7.5 million employees under collective bargaining agreements which cover 1,000 or more workers were working under union shop agreements. *Union Security and Checkoff Provisions in Major Union Contracts, 1958-59*, Dept. of Labor Bulletin No. 1272, p. 1, reprinted from the Monthly Labor Review, December 1959, and January 1960. The agreements studied were estimated to cover almost one-half of the employees working under collective bargaining agreements outside of the railroad and airline industries. *Id.*, p. iii.

disputed expenditures violate appellees' constitutional rights.

Probably because of the remedy sought in the theory of appellees' suit, all of the various political and legislative expenditures have been lumped together, both by the courts below and by the parties in this case. Each side has taken a "nothing" stand. As a result, both in the lower courts and in briefs and argument in this Court, all expenditures by officials of appellant unions to testify before legislative committees are bulked together with expenditures for political campaigns; support of legislation for increasing wages and hours, with support of a kind of farm legislation; expenditures by the AFL-CIO for themselves with expenditures by the AFL-CIO for the advocacy of ideas and candidates by a union; expenditures supported by subscriptions with such advertising; and journals supported directly out of general dues.

However, the various kinds of union activities and expenditures, which have been united together in this case, involve many differing considerations, and probably should not be treated in one basket for purposes of First Amendment or constitutional purposes. For instance, expenditures for support of proposed legislation, such as a wages and hours law, or a statute outlawing union shop agreements, which directly affects the strength and bargaining power of the union is clearly "germane" to collective bargaining, whereas it might be more difficult to establish the relevance of endorsing or opposing proposition concerning foreign aid or farm program. *De Mille v. American Federation of Radio*, 195 Cal. 2d 139, 187 P. 2d 769, certiorari denied.

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 the freedom of the majority to act together to
 their views known," but such a conflict may be
 difficult to find in the use of general dues fun-
 the campaigns of specific political candidates.
 the publication of a regular periodical design-
 reach members of the union may be subject to
 ent treatment than efforts to reach and influen-
 general public. *United States v. UAW-CIO*
 U.S. 567; *United States v. C.I.O.*, 335 U.S.
 Similarly, the testimony by officials of the union
 fore a Congressional committee and the sollicita-
 support for a political organization at a union
 ing (which appellees need not attend) might be
 constitutional treatment different from political
 ities which involve the expenditure of m-

"See *United States v. C.I.O.*, 335 U.S. 106. The
 legislation, which protects dissenting members from
 uting to funds used for political purposes, was not inte-
 apply to political newspapers. 335 U.S. 106, 150; *Rot-
 Government Regulation of Trade Unions in Great Brit-
 38 Col. L. Rev. 1335, 1364.*

"The English legislation does not affect political a-
 of unions which do not involve the expenditure of
 Rothschild, *op. cit.*, 38 Col. L. Rev. at 1364. The Feder-
 rupt Practices Act makes the same distinction. 18 U.S.

Finally, while a substantial portion of plants' dues are used for political purposes (19, R. 176), the per capita tax to is 5¢ a month, so that there is raised the impact on the constitutional issue of the cumulation of great numbers of individual taxes as well as the principle against support of political views one rejects—as against that the interest of any individual dissent. AFL-CIO's political expenditures might be considered to be *de minimis*.²¹

In sum, it seems to us that the question of the legality of these various union expenditures turn on differing and perhaps conflicting considerations, none of which has been adequately differentiated in the record or by the parties in this case. Possible differences have been overlooked in the courts below and by the appellees in this Court. This failure to differentiate differences suggests that the present case is an appropriate vehicle for this Court to decide the legality of these various expenditures or actions challenged by appellees. But as we show in Point II and III, *infra*, pp. 35-43, there is no basis for the Court's deciding that the statute attacked by appellees is valid, and that the maintenance and operation of the union should be made pursuant to that statute should not be enjoined. In Point IV, *infra*, pp. 43-49, we show that the union can and should pursue further remedial

²¹ For the situation in England, see Rothwell, *Col. L. Rev.* at 1365.

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w that appellees
dies in order to
nschild, *op. cit.*, 33

test that question. And in Point V, *infra*
53, we return to the problem of the co-
Court should follow with respect to the d-
penditures, and urge that the issues inv-
validity of those payments should not be d-
in this case at this time.

II

SECTION 2, ELEVENTH, OF THE RAILWAY LABOR CONSTITUTIONAL, WHETHER OR NOT THE EXPENDITURES ARE CONSTITUTIONAL

Regardless of the legality of the chal-
penditures and activities, Section 2, Eleven
Railway Labor Act is constitutional, and
ments made under it are valid on their f-

*A. This Court has sustained the constitutionality
2, Eleventh, and the general validity of union
ments made pursuant thereto*

Prior to 1951, the Railway Labor Act forb-
shop agreements between the railroads a-
representing their employees. Section 2, F-
Fifth (48 Stat. 1186), 45 U.S.C. 152, F-
Fifth. This provision was designed to p-
employees and independent unions against
unions. By 1950, however, company unions
tically disappeared, and between 75 and 8-
railroad employees belonged to independe-
Under the Act, the unions were and are r-
represent in good faith all of the employ-
class or craft which they represent, inclu-
union members. The non-union members
received the benefits of the collective
agency without bearing any share of its

correct this situation, Congress Eleventh, which permits (but does not require) unions and the railroads to enter into agreements (64 Stat. 1238), 45 U.S.C. § 151. H. Rep. No. 2811, 81st Cong., 2d Sess. Rep. No. 2262, 81st Cong., 2d Sess. union shop agreements were made notwithstanding state law to the contrary, the way Labor Act requires carrier-wide bargaining units which cross state lines, the railroads are necessarily considered interstate commerce. H. Rep. No. 2811, 81st Cong., 2d Sess., p. 5; 96 Cong. Rec. 16372.

Section 2, Eleventh, and the agreements entered into under were promptly challenged in several jurisdictions by employees who refused to join unions.²² This Court, noting that the legislation was a policy matter within the realm of Congressional choice, upheld the legislation, generally, as a proper exercise of the Commerce Clause, and not in violation of the First or Fifth Amendments. *Railway Labor Union v. Hanson*, 351 U.S. 225. The question

²² Attempts to amend the bill so as to require union shop agreements to prevail were defeated by wide margins in the House and Senate. 96 Cong. Rec. 16376, 17081.

²³ *Allen v. Southern Ry. Co.*, 249 N.C. 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

as passed Section 2, does not require) the enter into union shop U.S.C. 152, Eleventh, 2d Sess., pp. 3-6; S. Sess., pp. 2-3. The made effective notwithstanding, "because the Rail-wide bargaining (i.e., te lines), and because considered as in inter-2811, 81st Cong., 2d

reements made there- in suits brought in ees who did not wish otting that the wisdom matter properly within ice, upheld the provi- ercise of power under i violation of the First y *Employees' Dept. v.* estions of the imposi-

as to permit state law to s in each house. 96 Cong.

U.C. 491, 107 S.E. 2d 125, *Hudson v. Atlantic Coast* 1; *Sandsberry v. Interna-* B Tex. 340, 295 S.W. 2d *Moore v. Chesapeake &*

tion of assessments for purposes not g lective bargaining or of conditions other of dues, fees and periodic assessments, of such payments "as a cover for fore conformity or other action in contrav First Amendment", were thought not p record in *Hanson*, and were expressly U.S. 225, 235, 238.

The union shop agreements in this ca tially identical to that in *Hanson*. The present case, however, differs from th primarily in more explicitly showing th and fees, some of which are collected u of the union shop agreement, are used part for legislative and political pur advance the doctrines and ideas of th their officers.

B. The unlawful expenditure of funds collected under shop agreement would not invalidate Section necessarily invalidate the agreement

The primary contention made by appe accepted by the courts below, is that, substantial part of the fees and dues appellees for the disputed objectives, t depriving appellees of their constitution offensive feature of the unions' activity be the expenditure of the fees and du their collection. They object to being port political candidates and measure to reject. Thus, if appellees' fees and exclusively for the negotiation, mainten ministration of collective bargaining a

pellees would have no objection," and at any rate the whole case would be plainly governed by *Hanson*.

But with respect to the validity of the statute the important point is that Section 2, Eleventh, merely permits the making of union shop agreements and does not itself purport to draw the line between lawful and unlawful expenditures of union funds. Clearly, the Act does not purport to, and does not authorize or sanction, "political" expenditures which would be in violation of appellees' constitutional rights, or which would be otherwise unlawful. There is nothing in the provision which sanctions an expenditure or activity which would otherwise be unconstitutional; nor is there anything in it authorizing expenditures contrary to the Constitution, the Corrupt Practices Act, or state or Federal legislation. On this subject of "political" expenditures, the statute itself stands as if it explicitly provided that the union may make only such "political" expenditures as it may properly do under the Constitution and laws. It contains an implied prohibition against the use by the unions of dissenters' monies in any manner which would violate their constitutional or other rights. Hence, it cannot be challenged as invalid or unconstitutional, regardless of the invalidity of the expenditures disputed in this case.

In the hearings and debates leading to the passage of Section 2, Eleventh, there was brief mention of the

"The trial court found that appellee plaintiffs objected to the "collection and use" of fees and dues for "purposes other than the negotiation, maintenance and administration" of collective bargaining agreements and disputes arising under them (Finding 1, R. 101). Similarly, see Stip. ¶ 7, R. 166-7.

possibility of the use of fees and dues collected by virtue of union shop agreements for political or general purposes.²⁵ This meager legislative history falls far short of revealing a congressional intention to authorize expenditures of any kind, much less to authorize expenditures which may impinge upon someone's constitutional rights. At most, it is evidence only of a Congressional intent to leave the regulation of particular union expenditures to the Constitution, the Corrupt Practices Act (18 U.S.C. 610), other legislation, and to judicial decision.

If, as appellees contend and the courts below believed, the disputed expenditures violated appellees' constitutional rights, Section 2, Eleventh, itself would not be unconstitutional, because as we have noted it does not expressly, or by implication, require or authorize such expenditures.²⁶ For this reason, the holding of the court below that the Act itself is unconstitutional is plainly wrong and should be reversed. The courts below also committed error when they sweepingly declared on this record the union shop agreements to be "null, void, and of no effect as between the parties" (R. 106). *Hanson* held that these agreements are not null and void, but are valid in general and on their face. The illegality of the par-

²⁵ Hearings on S. 3295, 81st Cong., 2d Sess., Senate Subcommittee on Labor and Public Welfare, pp. 173-4, 316-7; 96 Cong. Rec. 17049-50.

²⁶ If there were any doubt as to whether or not the Act authorized expenditures which were in fact unconstitutional, that doubt should of course be construed to avoid the constitutional problem, i.e., not to authorize such expenditures. See, e.g., *United States v. C.I.O.*, 335 U.S. 106; *Crowell v. Benson*, 285 U.S. 22, 62.

ticular expenditures would not invalidate the whole agreement.

III

APPELLEES CANNOT AND SHOULD NOT OBTAIN AN
JUNCTION AGAINST ENFORCEMENT OF THE UNION
SHOP AGREEMENTS, WHETHER OR NOT THE DISPUTED
EXPENDITURES ARE CONSTITUTIONAL.

As suggested above, the burden of appellees' complaint goes to the expenditure of funds, collected in part from them, for legislative and political purposes which they claim are not related or germane to collective bargaining. They do not, and after the decision of this Court in *Hanson, supra*, could not contest the constitutionality of expenditures for purposes which are related to collective bargaining. If, under the holdings of the courts below, if *any* substantial part of the fees and dues paid by appellees is expended for improper purposes, then the union shop agreement is totally null and void and appellees are excused from payment of *all* fees and dues. It is difficult to understand why the improper expenditure of part of general dues funds should invalidate the entire agreement, excuse appellees from paying any part of the fees, dues and assessments called for by the agreement, and lead to non-enforcement of the agreement as a whole.

We have shown in Point II, *supra*, pp. 35-40, that the statute and the agreements are themselves valid. To permit the improper expenditure of certain funds by appellants to lead to invalidation of the whole

structure of union shop collective bargaining would be to place the rights of the individual appellees—unnecessarily and without adequate reason on this record—above the interests of the majority of the members of the appellant unions. For those majorities desire the union shop agreements and the form of bargaining such agreements embody. The sweeping relief granted below deprives them, without just cause, of the opportunity to carry their wishes into effect.

It is true that appellant unions have been granted powers by the government and are therefore under corresponding obligations. *Steele v. Louisville & N.R.*, 323 U.S. 192; *Tunstall v. Brotherhood of Locomotive Firemen*, 323 U.S. 210; *Brotherhood of R.R. Trainmen v. Howard*, 343 U.S. 768; *Conley v. Gibson*, 355 U.S. 41; see also *Syres v. Oil Workers International Union, Local No. 23*, 350 U.S. 892; *Cunningham v. Erie Railroad*, 266 F. 2d 411 (C.A. 2). But, at least insofar as their voluntary members (those whose membership is not solely a result of the sanction of the union shop agreements) are concerned, the unions are private associations. Their members have rights to associate with each other and, by majority vote, to take action through their elected officials for their mutual benefit as determined under their constitutions and by-laws. Such rights are secured by Title I of the Labor-Management Reporting and Disclosure Act of 1959. The Railway Labor Act itself contemplates such a system of industrial self-government. "This scheme contemplates group action through represent-

atives selected by a majority of the group." H. R. No. 2811, 81st Cong., 2d Sess., p. 4; see *Pennsylvania R. Co. v. Rychlik*, 352 U.S. 480, 498 (concurring opinion). The unions also have a legitimate interest in advocating certain principles and legislative programs, and to an extent that interest is protected by the Constitution. *United States v. C.I.O.*, 335 U.S. 106; see also *United States v. UAW-CIO*, 352 U.S. 567, 593-598 (dissenting opinion); *Bowie v. Secretary of the Commonwealth*, 320 Mass. 230, 69 N.E. 2d 100. Correlatively, when they reach the political sphere, unions have a responsibility to minority members, and those minority interests are likewise protected to an extent by the Constitution.

The drastic remedy granted by the courts below ignores both these interests of the majority member of the appellant unions and the policy of the Congress expressed in a statute which has been declared valid and constitutional by this Court in *Hanson*. The decree gives the unions only the choice of abandoning the union shop agreements, which were authorized by Congress in order to promote industrial peace among the Nation's railroads and to prevent free riding by non-union members, or of refraining from all legislative and political activities and withholding financial support from any organizations which engage

²² Congress has recently enacted comprehensive legislation designed to insure that the self government of unions, including those in the railroad industry, is democratic and that the unions do in fact respond to the wishes of a majority of its members. Labor-Management Reporting and Disclosure Act of 1959 (P.L. 86-257, 73 Stat. 519). This Act provides for regular and fair elections, freedom of speech and assembly within the union and increases in dues and fees and levying of assessments only by majority vote of members (Sec. 101 and Secs. 401-404, 29 U.S.C. (1958 ed., Supp. I) 411 and 481-483).

political or legislative activities. In effect, the decree prevents the majority of the members of the unions from enjoying the benefits of the union shop agreements, which are clearly valid at the very least insofar as they pertain to expenditures directly related to collective bargaining (*Railway Employes' Dept. v. Hanson, supra*); because they are also engaging in legislative and political activities which may be invalid. As we spell out in Point IV, *infra*, pp. 43-49, the courts can provide full protection to the asserted constitutional rights of appellees without interfering or infringing upon the legitimate interests of the majority of the members of appellant unions. The broad relief granted unnecessarily destroys the freedom of the majority to act.

IV

REMEDIES ARE AVAILABLE TO PROTECT THE RIGHTS WHICH APPELLEES HAVE ASSERTED

A. Injunction against the expenditure for the disputed purposes of funds derived from appellees' fees and dues

Normally, when the member of an organization challenges expenditures to be made by the organization, suit is brought to enjoin the assertedly improper expenditure.²⁸ In the situation at bar, the impropriety alleged is based not upon violation of the unions'

²⁸ The English decision limiting the use of union funds was made in such a case. *Amalgamated Society of Railway Servants v. Osborne* [1910] A.C. 87. Although it did not specify the precise remedy, the Wisconsin Supreme Court indicated that it would prevent abuse of the integrated bar system by limiting the activities and expenditures of the integrated bar, rather than declaring it invalid. *Lathrop v. Donohue*, 10 Wis. 2d 230, 102 N.W. 2d 404, pending on appeal, No. 200, October Term, 1960. See, also, Note, 32 Tulane L. Rev. 508, 511-12.

constitutions or by-laws or of any state or statute, but upon the fact that the funds of dis- who are members solely because of the union agreements, are being used for the disputed purpose. A proceeding, either on remand or in a new suit, to enjoin the use of expenditures of the funds derived from appellees for the disputed purposes, will therefore adequately protect appellees' rights.

That adequate relief to protect the rights of a dissenting minority is available by such a remedy may be illustrated by reference to proposed legislation. In 1958, Senator Potter of Michigan proposed an amendment to a pending labor bill which would have allowed each person who was required to be a member of a union by virtue of a union shop agreement (entered into either under the Labor Management Relations Act, 1947 or under Section 206(a) of the Railway Labor Act) to notify the Secretary of Labor that he wished the proceeds of his dues and fees to be "expended exclusively for collective bargaining purposes or purposes related thereto." Upon such notification, the unions would be prohibited from expending the proceeds of his dues and fees exclusively for such purposes, on penalty of perjury and sanctions. 104 Cong. Rec. 11330. The Senate did not accept the proposed amendment."

The interests which Senator Potter proposed to recognize by statute are virtually the same as

"It was defeated by a vote of 51 to 30. 104 Cong. Rec. 11347. Much of the opposition, however, was to the details and provisions of the particular amendment, rather than to its general objective. See remarks of Sen. Revercomb, 104 Cong. Rec. 11343; and Sen. Cooper, 104 Cong. Rec. 11347.

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which appellees assert are protected by the Constitution." It would be anomalous as well as unnecessary for the courts to provide a more sweeping remedy (i.e. invalidity of the union shop agreements) for the enforcement of those rights than to enjoin the expenditure of appellees' fees and dues for the dispute purposes.

Adequate relief in such an action by dissenting members could be achieved, for example, by segregating all of the receipts derived from those members who indicate their dissent into a special fund, which would be used only for purposes to which those members have no right to object. The grant of such relief, which would be substantially that provided by the Potter amendment, would not be inconsistent, in our view, with the provision in section 2, Eleventh, which allows an employee to be discharged for failure to pay the dues, fees, and assessments "~~uniformly~~ required" as a condition of membership. 45 U.S.C. 151 Eleventh (a)." On the other hand, depending on cir-

* Compare Sen. Potter's remarks, 104 Cong. Rec. 11214-15 with appellees' summary of argument, Appellees' Brief, pp. 16-17.

"The trial court found that by 'commingling of funds' appellants unions have made it impossible to segregate the amount of dues collected from [appellees]." (Emphasis added.) Finding 10, R. 104. Whatever the evidentiary basis for that finding, the court made no finding concerning the possibility of segregating the fees and dues which would be collected in the future. We have found nothing in the record to indicate that appellees' fees and dues could not, in the future, be segregated into a fund which would be used exclusively for the purposes to which appellees have no legal right to object; and we know of nothing which would prevent such a segregation.

circumstances it may be appropriate to regulations of the dissenting members in proportion to the percentage of the union's total expenditures used for the forbidden purposes.²² Such a question need not be resolved at this time, however, as the remedies sought are not to be granted by the courts below.

In addition to providing a remedy for the interests it purported to protect, a prayer for the expenditure of the receipts from assessments and dues for the disputed purposes would be at least three other advantages. First, it would negate the necessity of joining the employer, which has no legitimate interest in the union, in which the unions spend their money, as a party to the actions. See *Conley v. Gibson*, 355 U.S. 41, 42. Second, a showing that the dissenting members requested the appropriate officials not to use the money for their fees and dues for the disputed purposes would normally be a condition precedent to a prayer,²³ (thereby avoiding unnecessary

²² Great Britain has reached this result by the Trade Union Act of 1913, 2 & 3 Geo. V, c. 30. Under that Act the dissenting union member can "contract out" of the cost of the union's political activities. See *op. cit.*, 38 Col. L. Rev. at 1363. The Trade Union Act of 1927, 17 & 18 Geo. V, c. 22, modified that scheme, was repealed in 1946, 9 & 10 Geo. VI, c. 25.

²³ See Sec. 501(b) of the Labor-Management Disclosure Act of 1959, 29 U.S.C. (1958 ed., Supp. II) § 501(b). At least a showing that such a request would be required.

²⁴ No specific showing was made in this case, however, that appellant unions "[u]nless they will continue the complained of acts". Finding

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or the court might condition its grant of relief
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since, in order to restrain a particular kind of a
or expenditure, the dissenting members would h
show that the particular kind of activity or ex
ture infringed upon their rights. As we have a
noted (*supra*, pp. 25-28, 31-34), such precision
now present in the case at bar, since the actio
brought to restrain the enforcement of the union
agreements, not to enjoin the particular kin
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Although we have not found any decision o
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against use of funds contributed by the
purposes they disapproved * * *. [U

States v. C.I.O., 335 U.S. 106, 1
opinion of Rutledge, J., with
Black, Douglas and Murphy jo

See, also, *United States v. UAW-CIO*
597 (dissenting opinion).

B. Other possible remedies

The Labor-Management Reporting Act of 1959 is a major step by Congress to democratize procedures within unions, in making officials responsible to the union members in maintaining and preserving the rights of the member to vote, to speak, and to sue, and to bring such members against improper discipline. Sec. 101 of the Act, 29 U.S.C. (1958 ed.). In addition, the Act imposes fiduciary duties upon the officers of the unions, and sets the duty of each [union officer or agent], to account the special problems and functions of the organization, to hold its money and property for the benefit of the organization and to manage, invest, and expend the same in accordance with its constitution and bylaws and resolutions of the governing bodies thereunder." Sec. 501(a), 29 U.S.C. (1958 ed.). Sec. 501(a). For violations of this duty, the Act prescribed a federal remedy, available in the federal courts, similar to a stockholder's derivative action. After attempting to have the offending officer removed, the member may bring an action for damages or an accounting or for appropriate relief "for the benefit of the l

149 (concurring
in whom Justices
joined).]

IO, 352 U.S. 567,

g and Disclosure
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tion." Sec. 501(b), 29 U.S.C. (1958 ed.,
501(b).

Those who supported the Act in Congress
agreed that Section 501 was not intended
restrictions upon the duly authorized expendi-
union funds for political or other purposes."
other hand, critics of the bill expressed fears
bill would be construed to prevent expendi-
political and educational purposes." The
meaning and application of Section 501
course, evolve in the course of future litiga-

We do not take any position at this time
whether this recently enacted Section 501 is ap-
here. However, we call it to the attention
Court as possibly affording a remedy to dis-
workers like appellees.

V

THE COURT SHOULD NOT DECIDE IN THIS CASE THE CONSTITUTIONALITY OR LEGALITY OF THE EXPENDITURES AND ACTIVITIES

We end as we began (Point I, *supra*, pp. 1-2).
In our view, the Court need not and should not
determine the constitutionality or legality of the
expenditures and activities which appellees claim
are prohibited. Although it would frequently be convenient
for the parties and the public to have a prompt decision
concerning the constitutionality of a statute or

"See H. Rep. No. 741, 86th Cong., 1st Sess.; remarks of
Senator Kennedy, 105 Cong. Rec. 17900; colloquy among
Senators Kennedy, Ervin, and McClellan, 105 Cong. Rec. 652.

"See remarks of Senator Morse, 105 Cong. Rec. 18139-40,
and Congressman Shelley, 105 Cong. Rec. 18139-40.

taken under color of law, the "grace" of the judicial function in constitutional questions led this Court in its own governance, in the cases coming under its jurisdiction, a series of rules which have avoided passing upon a large part of all constitutional questions pressed upon it for its consideration. *Wander v. Tennessee Valley Authority*, 345, 346 (concurring opinion of Brandeis, J.). One of the foremost of these principles is the well founded one that the Court will not touch a question of constitutional law in a doubtful case. "The duty of deciding it," *Liverpool, N. Y. v. Emigration Commissioners*, 113 U.S. 439, 445, is not "to decide questions of a constitutional nature absolutely necessary to the decision of the case." *Burton v. United States*, 196 U.S. 315, 320. *Randolph*, 20 Fed. Cases 242, 254, 11 Va., per Marshall, C.J.).

This principle, which has its roots in the earliest decisions of the Court, is a respect for the legislature. *Ex parte* *Young*, *supra*. It has also been invoked "in cases of grave constitutional questions" which are tendered "not so shaped by the proceedings below" as to bring the Court "as leanly and as sharply as possible upon an exercise of congressional power." *United States v. C.I.O.*, 335 U.S. 105, 110 (opinion of Brandeis, J.).

¹ *Calder v. Bull*, 3 Dall. 396, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

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254, No. 11,558 (C.C.D.

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, 399; *Dartmouth College*

This salutary principle of avoiding questions which are not necessary to a familiar, and has been applied too frequently to require any extensive citation of cases. *S. v. McElroy*, 360 U.S. 474, 492-493; *See Abington Township v. Schempp*, No. 1 decided Oct. 24, 1960. We need only the Court has in recent years twice avoided constitutional questions concerning First Amendment freedoms similar in many respects to those in *United States v. UAW-CIO*, 352 U.S. 497, 504; *United States v. C.I.O.*, 335 U.S. 106.

There is special reason for invoking the present case as it now stands. As stated above (*supra*, pp. 23-34), the case presents a wide spectrum of constitutional problems. The Government and the parties in this Court have sought to distinguish and differentiate among the various types of union activities and expenditures in which the appellants have argued that all of their activities and expenditures are proper, while appellees contend that all expenditures not directly related to collective bargaining, education, maintenance and administration of bargaining agreements violate their constitutional rights. The various activities and expenditures in dispute have been lumped together, both in the briefs and in the contentions of the parties. The Government's proceeding to enjoin the use of the funds for the appellants' fees and dues for each kind of expenditure (or comparable litigation) would be a new demand or in a new action—would the Government's ground and the legal considerations con-

class emerge clearly. And only in such a proceeding, we submit, should this Court undertake the decision of the constitutional questions tendered in this case.

Moreover, the protection of the rights of dissenting and minority members of unions of employees in crafts and classifications represented by unions has been the subject of a great deal of legislative activity in recent years. The Labor-Management Relations Act, 1947 outlawed closed shop contracts (Secs. 8(a)(3) and 8(b)(1) and (2) (29 U.S.C. 158(a)(3), (b)(1) and (2)) and permits state legislation to be controlling even with regard to union shop agreements. Section 14(b), 29 U.S.C. 164(b). State laws forbidding union shop agreements (called "right to work" laws) have been passed in 19 states.³⁸ In 1957 and 1958 such proposals were before the voters in 7 states.³⁹ And as already pointed out, *supra* (pp. 48-49), the Labor-Management Reporting and Disclosure Act of 1959 enacted federal legislation relating to the use of union funds and assets. Congress has been investigating this area⁴⁰ and it is not known what legislation, if any, will result. In any event, it is possible that further clarification of the problems inherent in expenditures of the type challenged by

³⁸ *Union Security and Checkoff Provisions in Major Union Contracts, 1958-1959*, Dept. of Labor Bulletin, No. 1272, p. 1, reprinted from the Monthly Labor Review, December 1959, and January 1960.

³⁹ Two states, Indiana and Kansas, adopted the proposals and five rejected them. *Ibid.*

⁴⁰ The Senate Select Committee on Improper Activities in the Labor or Management Field (the McClellan committee), whose investigations culminated in the Labor-Management Reporting and Disclosure Act of 1959, recommended that political expenditures by unions be thoroughly investigated. S. Rep. No. 1139, pt. 1, 86th Cong., 2d Sess., p. 137.

appellees may be obtained from the political branches of the Government or from the lower courts.

CONCLUSION

For the foregoing reasons, we do not believe that the Court should reach or consider the constitutional issues tendered by the original parties as to the various challenged expenditures. Rather, we believe that the Court should simply reverse the grant by the courts below of an injunction against the operation of the union shop agreements, and should also reverse the rulings that the statute is unconstitutional and the agreements null and void. The case should then be remanded to the court below for further consistent proceedings. On that remand, or in a new action, appellees can if they desire pursue their remedies against the disputed expenditures. In such a proceeding, a proper record can be established and separate consideration given to the various classes of expenditures which appellees attack. Appraisal of the dissenters' claims will require recognition both of the responsibility of the union, when acting within the political sphere, toward the minority members, and also of the interests of the majority members in the proper functioning of the union as the collective bargaining agency.

Respectfully submitted.

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Attorneys.

NOVEMBER 1960.

No. 4

IN THE
Supreme Court of the United States
OCTOBER TERM, 1960

INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL.,
Appellants,

v.

S. B. STREET, ET AL., *Appellees.*

On Appeal From the Supreme Court of Georgia

**APPELLANTS' RESPONSE TO BRIEF OF
THE UNITED STATES**

MILTON KRAMER
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Argument

I. Congress contemplated that the unions make such expenditures and at least three has refused to restrict them or to give dissident members protection against them

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IN THE
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INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL.,
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On Appeal From the Supreme Court of Georgia

**APPELLANTS' RESPONSE TO BRIEF OF
THE UNITED STATES**

ARGUMENT

The brief of the United States takes the position that regardless of what expenditures appellant may make, the courts below were in error in holding section 2, Eleventh of the Railway Labor Act unconstitutional, in holding the union-shop agreements between appellant unions and the railroad appellees valid, and in enjoining the enforcement of the shop agreements, and that the decision below

therefore be reversed. With such a Government we are of course in accord. The Government's brief suggests also that this should not determine whether the expenditures involved violate constitutional rights of the appellees, because such expenditures are "outside the spectrum" of union activities some of which involve "delicate constitutional issues", and that there are possible remedies if the expenditures are excessive. With such suggestions we disagree.

I. Congress Contemplated That the Unions Would Make Expenditures and at Least Three Times as Much as They Restrict Them or to Give Dissident Unions a Right to Sue Against Them

As we pointed out in our main brief, the enactment of section 2, Eleventh Amendment, by the Congress, opposition to which was expressed both in hearings and on the floor of Congress on the ground that unions make expenditures of the nature here involved.¹ Congress contemplated such restrictions and enacted the bill.

Prior thereto, as we pointed out in our main brief (pp. 29-30), in considering the legislation which became the Labor-Management Relations Act, 49 U.S.C., secs. 141 et seq.), there was a full discussion, at hearings and on the floor of Congress,

¹ Hearings on S. 3295, 81st Cong., 2d Sess., Labor and Pub. Welfare, pp. 173-4, 316-7; 96

² Hearings, Sen. Comm. on Labor and Pub. Welfare, 80th Cong., 1st Sess., pp. 726, 796-819, 1004, 1452, 2146, 2150, 2401; Hearings, House Comm. on Labor and Public Welfare, 80th Cong., 1st sess., pp. 1326, 1624-5, 2260, 3015, 3057, 3650, 3701, 3846, 3869, 4135, 4885, 4887-9, 5110, 6436-8, 6437-8, 6439-40, 6441-2, 6443-4, 6445-6, 6447-8, 6449-50, 6451-2, 6453-4, 6455-6, 6457-8, 6459-60, 6461-2, 6463-4, 6465-6, 6467-8, 6469-70, 6471-2, 6473-4, 6475-6, 6477-8, 6479-80, 6481-2, 6483-4, 6485-6, 6487-8, 6489-90, 6491-2, 6493-4, 6495-6, 6497-8, 6499-70, 6501-2, 6503-4, 6505-6, 6507-8, 6509-10, 6511-12, 6513-14, 6515-16, 6517-18, 6519-20, 6521-2, 6523-4, 6525-6, 6527-8, 6529-30, 6531-2, 6533-4, 6535-6, 6537-8, 6539-40, 6541-2, 6543-4, 6545-6, 6547-8, 6549-50, 6551-2, 6553-4, 6555-6, 6557-8, 6559-60, 6561-2, 6563-4, 6565-6, 6567-8, 6569-70, 6571-2, 6573-4, 6575-6, 6577-8, 6579-80, 6581-2, 6583-4, 6585-6, 6587-8, 6589-90, 6591-2, 6593-4, 6595-6, 6597-8, 6599-70, 6601-2, 6603-4, 6605-6, 6607-8, 6609-10, 6611-12, 6613-14, 6615-16, 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arguments of the record. But the Gov- this Court need not the expenditures in- s of the individual res cover a "broad me of which raise and indicates other tures are unlawful.

ions Would Make Such Times Has Refused to at Members Protection

rief (pp. 27-9), while th was under consid- on to its enactment d on the floor of Con- make expenditures of ss refused to impose

it in our main brief gislation that became s Act of 1947 (29 as very considerable e floor of Congress.²

Sess., Sen. Subcomm. on ; 96 Cong. Rec. 17049-50.

Pub. Welf, on S. 55, 80th 1452, 1455-6, 1687, 2065, n. on Ed. and Labor on ss., pp. 64, 350, 1140-87, 31, 3806; 93 Cong. Rec. 8, 6440, 6523, 7488, 7492.

of expenditures of the nature here involve (in some instances these very appellant these very expenditures) that had or n union-shop agreements, and argument on to use union-shop agreements to obtain fur purposes, and yet the only restriction enac amendment to the Federal Corrupt Practi U.S.C., sec. 610). Some of this legislativ reviewed in *United States v. C.I.O.*, 335 U. 20, where the Court pointed out that sin had been made in the course of enactin Labor Disputes Act of 1943 to have Co minority members rights against the exp union funds to espouse political causes opp minority. Hearings on H.R. 804 and H.R. comm. of the Comm. on Labor and Ed., 78t sess., 117-8, 133; 89 Cong. Rec. 5334, 579; Rec. 6440.

In 1958, shortly after the decision of th Court of North Carolina in *Allen v. So. R* N.C. 491, 107 S.E. 2d 125, a case involving parties, these same issues, but reaching a opposite that of the Supreme Court of C amendment (prompted by the *Allen* decisio ing legislation was proposed that would dissident members of a union under a agreement the right to have their dues us collective bargaining and related purpos amendment was defeated.³ Again there wa able discussion on the floor of Congress.⁴ S of our main brief.

³ 104 Cong. Rec. 11330, 11347.

⁴ 104 Cong. Rec. 11274-5, 11338-9, 11343-4.

Once again, in enacting the Labor-Management Reporting and Disclosure Act of 1959 Congress had before it this question, and again restrictions on expenditures of the nature here involved were not imposed. See pp. 48-49 of the Brief of the United States.

It is thus abundantly plain that Congress has repeatedly had before it the question of restricting expenditures of funds by unions having union-shop agreements, the very types of expenditures here involved, and has refused to enact such restrictions. Plainly it was known to Congress that these unions engage in these activities and Congress has refused to restrict them while permitting a union ship. There can be no escape from the conclusion that when Congress adopted the policy of permitting railroad unions to negotiate union-shop agreements, that policy was to permit such agreements by unions functioning as they had been functioning for many years and that the permission was not conditioned upon the unions adopting radical and impractical revisions in the way they operate.

II. This Case Does Not Involve "Delicate Constitutional Issues" Concerning a "Broad Spectrum" of Union Activities

If the issue of the legality of the questioned union expenditures were here in a different posture,—if this case involved the validity of Congressional restrictions on expenditures of the nature here involved,—then in truth there would be involved "delicate constitutional issues" concerning a "broad spectrum" of union activities. *United States v. C.I.O.*, 335 U.S. 106, 120. Congress has imposed restrictions on what unions may do, and perhaps it may impose others. *United States v. U.A.W.-C.I.O.*, 352 U.S. 567, 598 (footnote). Such

statutorily imposed inhibitions on the freedom of those associated in a union would thus raise issues which this Court, in accord with its repeatedly stated principles, would avoid adjudicating unless absolutely necessary, out of "a just respect for the legislature", a coordinate branch of the government. *Ex parte Randolph*, 20 Fed. Cas. No. 11,558 at p. 254, quoted in *United States v. C.I.O.*, 335 U.S. 106, 125-6 (concurring opinion).

But the nature or variety of the union activities to which a dissident union member may be opposed is not relevant to the constitutionality of his being subject to a union shop and being required to pay dues, once it be held that his employment can constitutionally be conditioned on his paying dues part of which is spent for any purpose he opposes. See our main brief pp. 48-52. As we there explained, the nature of the ideas or activities opposed by the dissident member has no bearing on the legality of the expenditure, assuming of course that the expenditure is otherwise lawful as not in contravention of statute and not ultra vires.

There is no contention here that the expenditures involved are ultra vires or unlawful for any reason other than that they support causes opposed by the individual appellees. In the trial court, for example, the plaintiffs expressly disavowed any contention that the political expenditures here involved were violative of the Corrupt Practices Act. R. 232. If the expenditures were claimed to be ultra vires or otherwise unlawful a remedy would be afforded by section 501 of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C., sec. 501.

The contention of the individual appellees is not that there is anything innately wrong or unlawful in the activities of the unions in question but that they are wrong, and unconstitutional, only because they are financed in part with resources to which the disagreeing minority contributed. If the Court agrees, as we do, with the views of the United States that section 2, Eleventh of the Railway Labor Act is constitutional and that the union-shop agreements are lawful agreements, we have here simply a dispute whether certain expenditures by a union violate the constitutional rights of certain people. There are thus absent the considerations on which are bottomed the doctrine pursuant to which this Court has sometimes gone to rather extreme lengths to avoid deciding constitutional issues, which we have seen is a just respect to or a due regard for a coordinate branch of the Government. In passing on the constitutionality of the expenditures the Court would not be risking undoing any work of Congress or the executive branch of the Government. It is only the unions and their dissidents who might feel aggrieved by the decision, and neither of them is a coordinate branch of the Government.

Nor may it be said that a skimpy record was developed in the courts below. The record filed here must be one of the exceptionally large ones.⁵ Very clearly, the plaintiffs in the trial court put into the record everything they thought would be of the remotest help to them on any issue. Further proceedings in this case are hardly likely to cast any additional light on any of the issues, and in view of the material set forth on

⁵ We were advised by the clerk of the court below that the record in this case is by far the largest ever filed in that court,—more than twice as large as the next largest.

pages 87-99 and 102-9 of our main brief, and in light of the opinion of the court below on the first appeal to that Court in this case (*Looper v. G. S. & F. Ry. Co.*, 213 Ga. 279, 99 S.E. 2d 101; App. A to Jurisdictional Statement), the value of such further proceedings is, to say the least, difficult to perceive for other reasons.

III. The Expenditures Are Clearly Lawful

As we have seen above, it is not even contended that the expenditures involved are unlawful for any reason other than the fact that the unions making them have a union shop. Such expenditures, by unions not having a union shop, are not challenged. Nor does the Government suggest any invalidity of the expenditures; it simply says that if they are invalid the plaintiffs below misconceived their remedy and that regardless of their validity or invalidity section 2, Eleventh is constitutional and the union-shop agreements valid.

We find it difficult to understand an argument that expenditures by a union, otherwise lawful, might infringe First Amendment rights because the union has a union shop. Nothing that the union publishes or espouses or otherwise supports prevents any dissident member from doing anything, while, on the other hand, restricting the majority in engaging in such activities might well infringe their First Amendment rights. See *United States v. C.I.O.*, 335 U.S. 106, 120-2, 139. The individual dissident is as free as before to read what he wants, to think what he wants, to listen to what he wants, to say what he wants, etc.; the only requirement of the union shop is that he contribute to the funds of the union which get spent as a majority wishes within such limitations as Congress sees fit to and may constitutionally impose. If any other condition on con-

tinued employment is imposed, then under the union shop agreement itself, as well as under section 2, Eighth, the individual would not have to comply with union shop.

Indeed the problem, if there is one, is not a problem raised by a union shop. It is now settled that employees of a railroad employer and certain other employers must accept collective bargaining by a representative chosen by the majority. Even in the absence of a union shop, the motivation for belonging to a union to have a direct voice in determining its policies concerning the wages and working conditions of those it represents may be as compelling as a union shop. If a union shop raises First Amendment issues, why not those who belong because they desire direct participation in the affairs of their collective bargaining representative that fixes by agreement their wages and working conditions any less protected than those who decide to work for a railroad that has a union-shop agreement? Plainly these questions are not engendered by a union shop. The extensive discussion in *United States v. C.I.O.*, 335 U.S. 106 and in *United States v. U.A.W. C.I.O.*, 352 U.S. 567 was based on considerations not related to a union shop and assumed that the policy should be one determined by Congress within the constitutional limitations protecting the majority.

The Government's brief suggests the possibility of "contracting out" of a portion of the dues because of political activities, as is provided by statute in Great Britain. Brief, pp. 29-30, 45-6. But any such remedy for dissidents is obviously a legislative matter within the discretion of Congress; it is simply impossible to find any such affirmative requirements in the Constitution. Some of the Justices of this Court have re-

nized the possible desirability of such or similar legislation, but never has it heretofore been suggested as a constitutional requirement. *United States v. U.A.W. C.I.O.*, 352 U.S. 567, 597-8; *United States v. C.I.O.*, 335 U.S. 106, 149-50.

In the last two cases cited the opinions also adverted to the British legislation, and we deem it advisable to clear up what may be some misconceptions about that system of "contracting out" of political contributions.

The amount of the "political levy" concerning which a trade unionist in Great Britain may "contract out", that is, not pay upon filing a form declaring he does not want to pay, is the amount that the union credits to its "political fund". This amount has grown in recent years so that it has now reached perhaps a shilling per year in most unions and ranges up to two shillings per year per member. The union disburses this money in its political fund for two types of purposes; first, to pay the affiliation fee of the Labour Party for its members, and second, to make contributions to candidates for political office to help meet their campaign expenses⁶ or to subsidize them as members of Parliament.⁷ But only these disbursements are limited to the "political fund"; all other activities in the political

⁶ In Great Britain only the candidate and his election agent may make direct campaign expenditures, and the permissible amounts of such expenditures are strictly limited. "Parliamentary Elections in Britain", British Information Services, I.D. 1314, September 1958.

⁷ Martin Harrison, "Trade Unions and the Labour Party Since 1945", George Allen and Unwin Ltd., London, 1960, pp. 61, 65. (Also available in an edition printed in Great Britain, bound in the United States, Wayne State University Press, Detroit, 1960.)

or legislative realm are financed from the union's general funds, "no matter how controversial."⁸

Many of the union activities complained of here are carried on by British unions through their general funds, not their political funds. British unions, like ours, have union publications in the form of periodicals and pamphlets; they make the payment of the "political levy", espouse the cause of political candidates, support the policies of the Labour Party, and the like.⁹ British unions do not support the Labour Party other than by affiliation agreements, but it is accepted that they should do so.¹⁰ Some of them spend substantially more than their political funds come on political matters, and the propriety of these activities is apparently not questioned.¹¹

With respect to legislative activities the situation is somewhat different from that here both because of the difference in the legislative procedure and because trade union members of Parliament speak for all unions in Parliament.¹² It is sufficient to point out that British unions, through expenditures from their general funds, and British unions that have no political funds, devote considerable energies (and necessarily large expenditures) to so-called non-bargaining matters including representations to Parliament and to various branches of the government and the exposition of

⁸ Harrison, *op. cit.*, pp. 56-7.

⁹ Harrison, *op. cit.*, pp. 46-8, 57-8, 125-6.

¹⁰ Harrison, *op. cit.*, pp. 65-6.

¹¹ Harrison, *op. cit.*, p. 90.

¹² Harrison, *op. cit.*, pp. 292, 299, 332.

policies and views on legislation.¹³ It is the conclusion of a recent British study that a union "cannot fully represent its members without mixing in politics,"¹⁴ and that "political or revolutionary strikes apart, trade union political action could be little more than an oratorical gesture without the backing of substantial finance."¹⁵

The recent study of political activity by British unions reached a conclusion remarkably similar, even in language, to the argument on pages 53-62 of our main brief, especially on pages 61-2. With respect to the contention that politics should be left to the politicians and unions should confine themselves to seeking higher wages and better conditions, the statement is made:¹⁶

"Such judgments spring either from woolly thinking; or from a complete misapprehension of trade unionism. The unions have never been wholly isolated from politics, even in the days of purest *laissez faire*. In 1867 the Trades Union Congress found itself involved at birth with the Royal Commission on the Trade Unions. By the end of the century the unions were pressing for the State to introduce regulation of sweated labour; improved safety regulations, even nationalization. Such essentially industrial aims could not be achieved without the intervention of the State.

"Today there is less possibility than ever of a union avoiding involvement in politics. Even if we accept that the mission of trade unionism is just to 'win higher wages and better conditions'

¹³ Harrison, op. cit., pp. 125-6, 328, 331.

¹⁴ Harrison, op. cit., pp. 331-2; cf. our main brief, pp. 53-62.

¹⁵ Harrison, op. cit., p. 55.

¹⁶ Harrison, op. cit., pp. 13-14.

the idea that these can be won without into 'politics' bears no relation to reality. Activities of government have multiplied to a point where Ministers influence wage settlements in nationalized industries, and mediate disputes in private industry, 'politics and conditions' have become inextricably linked. Far from keeping the unions at a distance, governments continually seek their opinion on a wide range of questions. Union representatives are a familiar figure on innumerable committees in government and on every Royal Commission. Today it is unthinkable that this movement, which was hailed by Sir Winston Churchill as an essential part of the political realm, should become 'non-political' in the sense in which some of its critics use the term.

"But the unions are more than simple pawns, caught up in the political battle. They are combatants. Most of them are in direct partnership with the Labour Party; the decision taken in 1899 has led them a long way. 'Political unionism' has meant not only electing working class members to Parliament and 'winning better conditions' but also making pronouncements on education and foreign policy and helping to shape Labour's policy on disarmament and weapons and a host of other issues which have only a tenuous connection at best with the unionists' industrial interests."

It seems fair to conclude that the net effect of the British system in substance is simply to permit a union member to "contract out" of contributing to the fund spent for purposes for which the Corrupt Practices Act prohibits the expenditure of *any* union funds, as federal elections are concerned. But whether one agrees or disagrees with the wisdom or sufficiency of the British solution, we submit such solution, with its limited restrictions of the Corrupt Practices

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or any other accommodation of these conflicting
 ests, or no solution, is a matter for legislative
 mination and not a constitutional command. The
 expenditures here involved are otherwise lawful
 the fact that the unions have a union shop do
 render them unconstitutional as infringements of
 Amendment rights of anyone. Accordingly, th
 ecision below should be reversed and the case rem
 with instructions to dismiss the complaint.

CONCLUSION

It is difficult to understand the Government's
 of concern with the implications of its suggestion
 "delicate constitutional issues" are involved. I
 statement that "money talks" may result in a
 elusion that the expenditure of money from a
 to which an individual has contributed deprives
 individual of First Amendment rights if the ex
 jture promotes causes opposed by the individual,
 as we pointed out in our reply brief (p. 9) the
 issues would be raised by the Government's exp
 ture of funds contributed to by atheists and isol
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 America. Examples could be multiplied. Surely
 the limitations of the First Amendment are at
 as binding on the Government as they are on u
 and are at least as applicable to funds raised b
 coercive power of taxation as they are to funds r
 by whatever inducements there may be to union
 bership.

The Government's failure to discuss such im
 tions of its suggestion was not due to ignoran
 their existence nor to lack of time. We pointed
 out in our reply brief. It was last June when

Court called the attention of the Attorney the right of the United States to interparticipate in this case as a party. 28. Instead of filing a brief within the time Rule 41(1), the following September the filed a motion for leave to intervene, which promptly granted. The due date of the became November 9, the day after election. Department apparently found this time and shortly before its expiration applied for extension of time to November 25, stating that its brief consultations with certain high officials of the Government were required. Seemingly the the preceding June had been inadequate for purpose. The application for extension was denied, but a renewed application for an extension to November 19 was granted.

Plainly the Government has had and ample time for consultation and deliberation. It shows no concern over or even interest in the constitutional issues mentioned above of its suggestion that "constitutional issues" may be involved. This lack of concern results either from conviction that such issues are genuinely and from its conviction that their resolution is on the side of the validity of the expenditure.

As we stated at the outset, we are in accord with the Government's views that section 2, of the National Labor Relations Act is unconstitutional, that the union-shop agreements are valid agreements, and that the enforcement of these agreements should not be enjoined and was not enjoined. We submit that the expenditures do not infringe any First Amendment right.

that the decision below should be reversed, and
remanded with instructions to dismiss the

Respectfully submitted,

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Washington 6, D. C.

December 15, 1960

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 4

INTERNATIONAL ASSOCIATION OF MACHINISTS, *et al.*

Appellants.

—v.—

S. B. STREET, *et al.*

Appellees.

ON APPEAL FROM THE SUPREME COURT OF GEORGIA

BRIEF UPON REARGUMENT, FOR APPELLEES, S. B. STREET, NANCY M. LOOPER, HAZEL E. COBB, J. H. DAVIS, MRS. EDNA FRITSCHER, MRS. ELIZABETH FERGUSON, AND OTHERS SIMILARLY SITUATED

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IN THE
Supreme Court of the United

OCTOBER TERM, 1960

No. 4

INTERNATIONAL ASSOCIATION OF MACHINISTS

—v.—

S. B. STREET, *et al.*,

ON APPEAL FROM THE SUPREME COURT OF GEORGIA

**BRIEF UPON REARGUMENT, FOR APPELLANTS
STREET, NANCY M. LOOPER, HAZEL E. COOPER,
DAVIS, MRS. EDNA FRITSCHER, MRS. E. M. FERGUSON,
AND OTHERS SIMILARLY SITUATED**

Introductory Statement

Six employees of the Southern Railway System, on behalf of themselves and fellow workers similarly situated, after litigating for seven years in the Courts of Georgia, obtained rulings that laborers, however humble, have the right to their own political opinions and to express them as they see fit, and that labor union compulsory union contracts cannot force the suppression of political thoughts, expressions and financial contributions of the six plaintiffs and other railroad workers.

ject to union shop contracts in this country.¹ The question for decision, upon reargument here, is whether this Court will protect the individual railroad employee from being compelled, through governmental power and at the price of his job, to become a member of a union engaged in political activity and to support legislative programs, political philosophies, and candidates for public office contrary to his convictions and beliefs, or whether judicial redress should be denied and a decision avoided, as the Solicitor General advises.²

The constitutional issue is clearly drawn. The appellant unions, as labor organizations established under the Railway Labor Act, obtained recognition as statutory collective bargaining agents for achieving industrial peace and stability on the nation's railroads, pursuant to national policy. In this role they have sought and obtained the compulsive power of the United States Government to force all their fellow workers to join their associations and support financially their efforts to achieve their partisan political and ideological goals.³ Throughout this proceeding, and indeed

¹ *International Assn. of Machinists, et al. v. S. B. Street, et al.*, 215 Ga. 27, 108 S.E. 2d 796 (1959); *Looper, et al. v. Georgia Southern & Florida Ry. Co., et al.*, 213 Ga. 279, 99 S.E.2d 101 (1957).

² Upon notification from this Court in accordance with Section 2403 of the Judicial Code (28 U.S.C. § 2403) the United States, acting through the Solicitor General, presented its petition for leave to intervene in this proceeding. Leave being granted, the Solicitor General filed a brief on behalf of the United States, and the appellant unions, on December 15, 1960, filed a brief in response. This brief on behalf of the individual appellees is submitted in response to the briefs of the Solicitor General and of the appellant unions in response, and is supplementary to the main brief filed by individual appellees March 16, 1960.

³ It is suggested in the opposing briefs that the union shop is not an element of the appellees' case, and that the same questions arise under an open shop (appellant unions' responsive brief, pp. 7-8; Solicitor General's brief, pp. 30-31). The suggestion mis-

at the very bar of this Court, the appellants have admitted their use of money collected from the individual appellees, through the leverage of governmental power, for partisan political purposes.⁴ As both lower courts found, as the in-

apprehends the issues. It is one thing to compel a man to pay political tribute to a union *as the price of his livelihood* and as a condition to retaining his long-held job. It is quite another thing to leave him free to join or resign as he chooses, and to contribute or not to contribute, without jeopardizing his job. Whether, without a government-imposed union shop, the employee would be subject to sufficient compulsion or coercion toward membership and political contributions to invoke constitutional guarantees is not the issue in this case. The question here is whether the employee can be forced to *how to money exactions for political purposes in order to keep his job*.

⁴These colloquies occurred in the first oral argument of this case, April 21, 1960:

(Transcript, p. 25) "Mr. Kramer (counsel for appellant unions):

... What happens to the people here? They have to pay \$3.00 a month, some of which gets spent for purposes of which they disapprove. . . .

"Mr. Justice Stewart: In theory of course they are not forced to listen, but to speak. Their money is taken from them, compelled, compulsorily, in order to support speech in which they do not believe.

"Mr. Kramer: That is right.

"Mr. Justice Stewart: And with which they disagree.

"Mr. Kramer: That is right."

(Transcript, p. 26) "Mr. Kramer: A portion of the money, after it is received by the union, is used to support or oppose legislation—to support legislation which they oppose or to oppose legislation which they support.

"Mr. Justice Stewart: Exactly."

(Transcript, pp. 28-29) "Mr. Justice Black: Does it mean these people, in order to hold their jobs, pay money which is to be used to advocate public views which they oppose, or to favor public views which they are against?

"Mr. Kramer: I am not sure I understand what you mean by public views.

"Mr. Justice Black: Let's leave out the word 'public'. Views that have to do with legislation, that have to do with social policies?

"Mr. Kramer: Yes.

dependent evidence now before this Court indisputably establishes, and as the appellant unions have admitted formal stipulation:

"The periodic dues, fees and assessments which plaintiffs, intervening plaintiffs and the class they represent, have been, are and will be required to pay under the terms of the union shop agreement hereinabove referred to, have been, are being, and will be used in substantial part for purposes other than the negotiation, maintenance, and administration of agreements concerning rates of pay, rules and working conditions or wages, hours, terms and other conditions of employment, or the handling of disputes relating to the above, but to support ideological and political doctrines and candidates which plaintiffs, intervening plaintiffs, and the class represented by them, were, are, and will be

"Mr. Justice Black: That have to do with problems that people are interested in as citizens, and as members of society."

"Mr. Kramer: Yes."

(Transcript, p. 30) "Mr. Justice Brennan: Is there a limit in this case of abusive use of some of these funds to support the candidacies of particular candidates who some of the plaintiffs might oppose?"

"Mr. Kramer: Not by name, no."

(Transcript, p. 31) "Mr. Justice Frankfurter: Is there any point in denying the fact that part of the money, a fraction of the money that the members of this union must contribute in order to become members of the union and therefore to hold their jobs, would be used in support of measures and men that 'X' number of men and machinists would oppose?"

"Mr. Kramer: I think that is so."

(Transcript, p. 75) "Mr. Justice Black: What about subscriptions to LABOR?"

"Mr. Schoene [for the appellant unions]: That comes out of the Educational Fund, and have their origin in—"

"Mr. Justice Black: Dues Fund?"

"Mr. Schoene: Yes, sir."

"Mr. Justice Black: Are you challenging any of the findings?"

"Mr. Schoene: *Oh, not at all*" (italics added).

opposed to and not willing to support voluntarily" (R. 176).⁵

The conduct exposed by this open confession calls for unequivocal condemnation.

In the face of this shocking record, one might have expected the Solicitor General to take it as his sworn duty to uphold the highest law, and to vindicate the constitutional rights of the individual. On the contrary, his brief would have this Court ignore the question that demands decision. He says (brief, p. 49): "In our view, the Court need not and should not determine the constitutionality or legality of the various expenditures and activities which appellees challenge." Offering an escape instead of a remedy, the Solicitor General suggests (brief, p. 17), that it would be "appropriate" for the Court to set aside the relief granted to these laborers by the Courts below and uselessly "to reaffirm the general constitutionality of Section 2, Eleventh, of the Railway Labor Act, and of the union shop agreements made pursuant thereto", in the same terms already used by the Court in *Railway Employees' Dept. v. Hanson*, 351 U.S. 225 (1956).

⁵ Appellant unions also declared at page 103 of their main brief dated February 15, 1960:

"On August 14, 1958, a comprehensive stipulation was entered into by all parties. R. 165-205. In said stipulation the *union defendants conceded virtually everything plaintiffs might contend concerning them and their associates and affiliates*" (italics added).

The Solicitor General, at page 8 of his brief filed November 1960, declared:

"The evidence in the voluminous record in this case falls into four distinct categories: (1) the stipulation of facts (R. 165-217); (2) plaintiffs' three requests for admissions and the unions' answers (R. 277-323; Tr. 1049-75); (3) the depositions of officials of political organizations with which the unions are associated (R. 108-152); and (4) various documents and periodicals of the unions tending to show union activities and expenditures in political and legislative affairs. *The pertinent facts are not in dispute*" (italics added).

For nearly eight years, the six railroad laborers who the appellees here have struggled through the state federal courts in quest of protection for their rights, without once questioning that their constitutional guarantees have been openly violated, the Solicitor General would send these hapless workmen back to the lower courts overwhelmed, to begin afresh with an arduous new trial or new suit", or to despair in a contest of attrition. Assuming the role of adviser to this Court, he would simply exonerate the responsibilities of decision and "reaffirm" the decision in the *Hanson* case which he recognizes⁶ did not involve the issues controlling here.⁷

⁶ "The union shop agreements in this case are substantially identical with that in *Hanson*. The record in the present case, however, differs from that in *Hanson* primarily in more explicit showing that union dues and fees, some of which are collected under sanction of the union shop agreement, are used in substantial part for legislative and political purposes, and to advance doctrines and ideas of the unions and their officers" (brief, p. 10).

⁷ In the *Hanson* case, the same unions were parties with the same attorneys, and the contract was similar, but that case was made before the contract was put into effect; so there was *virtually no evidence or factual record* in the *Hanson* case. It therefore was a supposititious case tried largely on argument and rumor.

(Transcript of argument in *instant* case, p. 6) "Mr. Justice Frankfurter: May I interrupt you to ask this.

"Compared to the *Hanson* case, and the pleadings in the *instant* case, what issues, if any, were tendered in this case that were not before the various courts in the *Hanson* case?"

"Mr. Schoene [for the unions]: I have not, I am not, to say, made a detailed comparison of the pleadings in the two cases. I think, however, that this is a substantial response to your question: I do not believe that the *Hanson* case had a specific allegation in the pleadings that union monies were expended for political or legislative activities."

(Transcript of argument in *instant* case, p. 69) "Mr. Schoene: * * * It is true that that [*Hanson*] action was brought before the union shop agreement had actually become effective, and consequently an injunction issued in the state courts before there was any opportunity to show that individual persons had been required to join the union."

The remarkable position taken by the Solicitor General is opposed to the basic obligations of the judiciary in a con-

their particular money had been used for any of these purposes."

(Transcript of argument in the *Hanson* case on May 2, 1956, p. 47) "Mr. Justice Black: Have they challenged here that payment of any particular dues for any particular purposes being imposed on them, requiring them to do something they don't want to do?

"Mr. Nelson [Assistant Attorney General of Nebraska]: No. That it is actually done in this case, I don't think so. Mr. Justice Black; because I think this action was brought before there was an opportunity to even put this contract into operation, at least to any extent. So I doubt if that question could be shown to actually have happened in this case."

(Transcript in *Hanson* case, pp. 60-61) "Mr. Justice Black: The question that I have in my mind is the question that I had before: I do not yet see how this case raises any of those questions where they are in a position in this particular challenge.

"Mr. Schoene: I agree with you, Mr. Justice Black. I don't think those questions are raised at all. I think first you would have to have a specific instance in which the effort has been made to apply to some individual some condition that he finds offensive to his conscience."

(Transcript in *Hanson* case, pp. 59-60) "Mr. Justice Black: * * * Do you construe that as meaning that the man who wants the job can get it, provided he applies to section 4 to this limited extent: he has to do nothing but pay periodic dues, initiation fees, and assessments?"

"Mr. Schoene: I would say he has to do one further thing. Mr. Justice Black, which may not be of any practical significance, but which I think is essential to give meaning to the words 'become a member and maintain membership.' That is to say he has to be consensually willing to join with his fellows in an association. What that means as a practical matter I frankly can't tell."

"Mr. Justice Black: Let me give you another illustration. Suppose you contract to do this, and he had to become a member, he had to be a participant, even though the union was supporting a political party with which he did not agree. Does this relieve him from being compelled to subscribe to such an association as that? If you don't want to say whether it does or does not, is that question raised here?

stitutional system of government, and reveals its examination to be in conflict with the most fundamen

"Mr. Schoene: I think it is definitely not raised by Justice Black."

In the face of the above admissions of counsel in argument with the Court, it is difficult to understand how the appellants could have brought themselves to make the statements below:

(Transcript of argument in instant case, p. 15) Kramer: "••• The Hanson case is fully dispositive of the contention raised by the individual Appellees."

• (Transcript of argument in instant case, p. 16) Schoene: "It is our position—and the sole point that we want to argue—that every issue in this case was disposed of by this Court's opinion and decision in the *Hanson* case."

(Main brief of appellant unions, p. 19) "All the facts in this case were present in the *Hanson* case. The same arguments were made."

(Main brief of appellant unions, p. 26) "Both the Nebraska and U. S. Supreme Courts [in *Hanson*] assumed that the Railway Labor Act authorized union shop agreements. The fees and dues were used in part for legislative and administrative purposes."

(Main brief of appellant unions, p. 35) "Since none of the findings of the trial court and none of the evidence in this case in any material respect from the findings and evidence in the Nebraska case, we respectfully urge that the decision of the Court in the *Hanson* case is dispositive here and that a reversal of the decision below."

(Main brief of appellant unions, p. 37) "The briefs by Robert L. Hanson, *et al.* in this Court in *Ry. Employees' Dept. v. Hanson*, 351 U.S. 225, made all the contentions of the plaintiffs here urged upon the court below."

(Main brief of appellant unions, p. 38) "... it is clear that this Court in the *Hanson* case had before it for decision the precise issue decided by the court below."

(Amicus Curiae brief of AFL-CIO, pp. 4-5) "The transcript of Record before this Court in *Hanson* clearly shows that union dues were used for political purposes."

"In the face of such evidence, this Court unanimously rejected the constitutional attacks upon the validity of the Railway Labor Act, the National Labor Relations Act, 2, Eleventh and the union shop agreement identical to the one here challenged."

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The brief of the Solicitor General attempts to off
three purported excuses for avoiding decision: First, t
record made by the parties is said to be inadequate; Secor
the remedy afforded by the decree is said to be improv
in view of a supposed alternative remedy; and Third, t
court below is said to have erred in declaring the statu
and the contract "itself" to be void.

Summary of Argument

I. The record in this case is exceptionally large, t
proof is uncontradicted, and this litigation has already c
tended for nearly eight years. Yet the Solicitor Gener
suggests that it is "inadvisable" for the Court to deci
the case on this record because, apparently, he feels th
the individual appellees have proved too wide a range
political activity by the appellant unions, and they ther
fore should be forced to undergo further extended a
costly litigation in order to obtain fine judicial distinctio
between the great varieties of political and ideologic
expenditures which appellant unions make with mone
forcibly extracted from appellees, thus infringing appelle
constitutional rights.

I A. The Solicitor General erroneously assumes that t
courts must make all possible distinctions and decide
possible issues—actual or hypothetical—before they c
decide even the most fundamental constitutional iss
Such assumption overlooks the basic principles (1) th
individual appellees (as plaintiffs) are entitled to prev
if they can show invasion of their constitutional rights
any one of several particulars; (2) that the courts co
not properly give advisory opinions as to all potential

tivities and expenditures of appellant unions and possible variations and combinations of such activities and expenditures; and (3) that the parties have met in a direct conflict on fundamental issues, with the slightest suggestion of collusion, and are entitled to a decision on the issues thus presented.

I B. It would be highly irregular for the Court to participate and decide supposititious detailed constitutional issues in advance of the necessity for decision. See *Employees' Dept. v. Hanson*, 351 U. S. 225 (1956); *States v. Rumely*, 345 U. S. 41 (1953). This Court has condemned efforts, such as that urged by the Solicitor General, to declare in advance a detailed code of constitutional conduct when the necessary and requested relief is an injunction against unconstitutional conduct. Thus, in *NLRB v. Committee for Industrial Organization*, 307 U. S. 276 (1939), the lower courts sought to specify the conditions under which defendants could act without infringing the constitutional rights of plaintiffs. This Court reversed, saying (307 U. S. at 518):

"The decree attempts to formulate conditions under which respondents and their sympathizers may distribute such literature free of interference. We think the decree goes too far. All respondents are entitled to is a decree declaring the ordinance unconstitutional and enjoining the petitioners from enforcing it."

In many other situations this Court has enjoined governmental action which invaded First Amendment rights without attempting to define, or require the lower courts to define, the boundaries within which action could be taken constitutionally. As recently as December 12, 1960, the Court approved an injunction against enforcement of a statute which infringed "associational freedom" even though the Court evidently believed that if the statute were

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rowly drawn it would be constitutional. *Shelton v. T*
21 U. S. Sup. Ct. Bulletin 245 (Nos. 14 and 83). So in
instant case the Court should condemn the uncon-
tional conduct complained of, and should not defer
thus deny) justice by requiring preliminary decision
hypothetical, speculative and unnecessary questions.

I C. The trial court followed the traditional and fl
equity practice of granting an injunction against unl
conduct while inviting appellant unions to obtain mod
tion of the injunction by showing that their improper
tivities have ceased. The court thus followed the ex
of this Court in *Brown v. Board of Education*, 347
483 (1954), and 349 U. S. 294 (1955), where this Cour
declared "the fundamental principle" that racial seg
tion in public schools is unconstitutional, but left for
disposition the details of compliance in individual
tions. Here, as in the *Brown* case, the burden of prese
a plan of compliance was properly placed on defen
(appellant unions), who are in the best position to
and advise the trial court of the possible methods
will protect individual appellees while having the lea
verse effect on the internal affairs of the unions.

I D. The Solicitor General suggests that the c
should "balance" the constitutional rights of appell
freedom of thought, speech and association against th
terests" of the "majority" in enforcing the union
This assumes that First Amendment rights must some
yield to the desire of the "majority" to compe
"minority" to support financially the "majority's" po
and ideological programs which the "minority" op
This Court has held squarely that there is no constitu
right to force others to join a union in order to keep
jobs. *Lincoln Federal Labor Union v. Northwestern I*
Co., 335 U.S. 525, 537 (1949). *A fortiori* there is n

stitutional right to force contribution to the political activities as the price of continued employment there can be no "balancing" of the constitutional freedom of speech, belief, association and property against "interests" which have no constitutional basis. Moreover, there is eminent authority for the proposition that the First Amendment rights are not subject to "balancing" against *any* conflicting interests, but only against any governmental interference, of any kind, without regard to the purported justification for the impairment. Clearly there can be no such "balancing" in the case at bar.

I E. The Solicitor General suggests that the evidence is "deficient" for constitutional adjudication, but the constitutional evidence sought by him is plainly irrelevant and immaterial in view of the fundamental issues here. The Solicitor General's asking for the absolute numbers of persons (1) who were forced to join the Communist Party in order to keep their jobs, and (2) who objected to the use of their funds for political and ideological purposes, and (3) the absolute and relative amounts (stipulated to be "substantial") of dues moneys used for political purposes—all this pre-supposes that the constitutional rights of the appellees may be subject to the doctrine of *de minimis*, a position which is contrary to the very basis of the constitutional position, as explained by James Madison nearly a century ago (I Stokes, *Church and State in the United States* 391):

"Who does not see that . . . the same argument can force a citizen to contribute 3 pence to the support of property for the support of any one religion, or may force him to conform to any other religion in all cases whatsoever."

Moreover, the fourth "deficiency" suggested by the Solicitor General—a supposed lack of evidence of "

the unions' political employment. Surely constitutional rights of political action on a constitutional basis. the proposition subject to "balancing" in

that the record is not, but the additional and irrelevant facts are presented. Absolute and relative to join the unions object to the use of funds for political purposes, and (stipulated to be constitutional rights of appeal *de minimis*, a basis of our Constitution nearly 200 years *United States*, 387,

the authority which depends only of his one establishment, other establishment

supported by the Solicitor General of "the feasibility

of segregating" funds so that "dissenters'" contributions would not be used for political purposes—is predicted by the Solicitor General's proposal for a tedious preliminary determination by the trial court of all possible (actual and hypothetical) issues before justice is done. Such a procedure would be erroneous. Any allocation of funds should be considered only if and when the appellant unions present a plan of compliance which incorporates such allocation and demonstrate that it is administratively practicable. Allocation of funds between types of political activities suggested by the Solicitor General, would be contrary to the Court's holding in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642 (1943), that "neither Congress, nor a State, nor a local, high or petty, can prescribe what shall be uttered in politics, nationalism, religion, or other matters or require citizens to confess by word or act their faith therein."

I F. The record is entirely adequate for constitutional adjudication. But even if it were not, and even if the Court were to avoid the constitutional issues for some reason suggested by the Solicitor General, there is no reason for avoiding decision as to the validity of the activities complained of. The Solicitor General says that the Labor Act does not authorize improper expenditure of funds, but if that were so, the Court should grant an injunction on statutory grounds, even though the issue has been presented on constitutional grounds. See *Boys v. United States*, 29 U.S.L. Week 4049 (No. 7, December 1943), where the Court took such action. None of the reasons advanced by the Solicitor General for reluctance in making constitutional determinations can be applied to a case where the Court is asked to declare that collection of funds for political use is not authorized by statute.

II. Due deference for the independence of the judiciary and for the chancellor's discretion requires that the decree be affirmed without regard to procedure so long as the substance of federal rights is preserved. *Nashville, C. & St. L. Ry. v. Wallace*, 289 U.S. 285 (1933) and cases cited.

II A. The decree in fact is entirely proper in view of the practical necessities of the case. The proper remedy is to enjoin the collection of money in excess of that asserted by the demanding agency exceeds legal bounds, even though part or all of the money could be lawfully collected under a different law. *McCarroll v. Dixie Greyhound Lines*, 309 U.S. 339 (1940); *Ingels v. Morf*, 300 U.S. 290 (1937); appended opinion of Mr. Justice Frankfurter in *Carroll v. Greyhound Lines v. Brice*, 339 U.S. 542, 561 (1950); *Ingels v. Morf*, 327 U.S. 416 (1946). Where, as here, the funds are mingled and part has been used for unlawful purposes, an injunction is proper to prevent the further dissipation of funds until the collector can show that the funds will be used only for lawful purposes. *Foot v. Great Northern Ry. Co.*, 300 U.S. 494 (1914); *Great Northern Ry. Co. v. Brotherhood of Locomotive Engineers*, 300 U.S. 154 (1937). Here, the appellant unrefutedly stated that funds forcibly exacted from appellants were for purposes unrelated and unnecessary to the operation of the railroad; and they arrogantly assert that they have a restricted right to use such funds for any purpose they desire. Under these circumstances the injunction against the use of the funds is not only appropriate, but is the only relief which could be granted.

II B. The Solicitor General has suggested that in support of his position, that "alternative" remedy should have been pursued by appellees. These remedies

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Foot v. Stanley, 232

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allocation of funds between political and non-political
 poses and between various types of political purposes
 that appellees would have the option to prohibit
 their contributions for certain political programs
 possibilities should be considered only after the
 unlawful expenditures are enjoined and appellants
 have presented a plan of compliance incorporating
 proposals to protect the constitutional rights of
 Justice is defeated by judicial avoidance of ineffectual
 fundamental issues where litigation thus becomes
 ably long and expensive. Mere tracing of appella-
 nt contributions would be futile, since appellant unions
 frustrate appellees' rights by bookkeeping entries
 any effective protection for appellees necessarily
 the functional equivalent of the lower court's decision.

II C. The Solicitor General's suggested "alternative"
 would place on individual appellees the impossible
 and expensive burden of policing the political and
 ing practices of appellant unions, thus imposing
 procedural obstacles, which would, in practical
 stroy their rights.

II D. The Solicitor General suggests that futu-
 re legislation may cure the constitutional infirmities of the
 contract as presently administered. Clearly this
 not deny redress for flagrant violation of con-
 stitutional rights merely because the legislative branch of
 government could, or might some day, remedy the situation.
 Court should, and regularly does, declare basic
 constitutional rights and provide protection for such rights
 waiting for Congress to act. Legislative precedents in
 England are inapposite since England has no work-
 shop constitution and since the union shop is not a subject
 of collective bargaining and is not legally enforceable there.

III A. Contrary to the Solicitor General's contentions, the trial court properly declared Section 2, Eleventh, unconstitutional *under the facts of this case*. The *Hanson* decision, which held the statute constitutional *on its face*, reserved decision as to validity of the statute if facts such as are of record here were presented. Appellees' constitutional rights have been infringed under cover of that statutory provision, and to the extent that the statute is so applied it must be declared unconstitutional. Only the statute authorizes the forcible exaction of appellees' monies which have been and are being used for unconstitutional purposes. Therefore, the lower courts properly declared the statutory provision unconstitutional under the facts of this case.

III B. The Solicitor General, by admitting that "delicate constitutional issues" are presented by this case and that injunctive relief against unconstitutional expenditures is available to appellees (though the Solicitor General proposes a different and frustrating method of obtaining such relief), necessarily concedes that the union shop contract and its administration under the facts of this case constitute governmental action and that, contrary to his own principal contention, the statute, the contract and the expenditures under it are a unit and must stand or fall together. The Solicitor General evidently believes that some of the expenditures under attack are unconstitutional. Appellants directly and boldly assert that Congress intended to authorize the expenditures here complained of. Appellants agree with appellees that the constitutional issues are adequately presented by the record in this case. Thus, a composite of the briefs of the Solicitor General and of appellants supports the view of appellees that Congress is responsible for the expenditures complained of and that the constitutionality of the statute,

the union shop contract and expenditures under the contract are squarely and properly presented for decision by this Court in this case.

III C. The Solicitor General contends that the union shop amendment of the Railway Labor Act is saved from unconstitutionality by an "implied" prohibition against unconstitutional use of the funds forcibly exacted from appellees by Congressional authority. That contention is plainly unsound as it would eliminate the need for constitutional review of all or substantially all legislation which comes before this Court. Congress cannot disclaim responsibility for the natural consequences of conduct which it authorizes and promotes in pursuance of a governmental objective. Congress must establish standards which will protect private constitutional rights against misuse of the power it delegates or otherwise confers. *Schechter v. United States*, 295 U.S. 495 (1935); cf. *Speiser v. Randall*, 357 U.S. 513 (1958). Governmental responsibility for conduct which impairs constitutional rights cannot be avoided by permitting "a private organization" to engage in such conduct. *Terry v. Adams*, 345 U.S. 461 (1953). Government cannot give blanket authority to the unions and then deny responsibility for the misuse of that authority.

IV. The "integrated bar" case is to be distinguished from this case on many factual and legal grounds, including (1) the highly significant fact that there the court provides a continuing supervision over the expenditure of funds, thus affording the protection omitted by Congress and otherwise unavailable under the union shop contract, and (2) the integrated bar is a governmental organization whereas the appellant unions are essentially private associations chosen to serve in a governmental regulatory program.

ARGUMENT

I.

The record now before this Court establishes clearly that individual appellees' constitutional rights have been violated.

The brief filed by the Solicitor General begins with a short résumé of the undisputed evidence of record in the proceeding. With a few glaring exceptions, that statement of facts constitutes a fair, objective, and accurate outline of the meticulous, detailed evidence, occupying more than a thousand "pages" (many of such "pages" consisting of voluminous documents, newspapers, magazines, etc.), introduced before and considered by the trial court. Even that superficial summary requires a full twelve pages of the Solicitor General's brief. Yet he has suggested that somehow it is "inadvisable" to accept the concrete, uncontradicted evidence, and the findings based upon it. The principal reason assigned for this unusual suggestion is apparently, that the appellees have proved too wide a range of political activity by the unions and have thus supported the allegations of their petition too fully and too well.*

* Appellant unions (responsive brief, p. 6) agree with individual appellees that the record is adequate for all purposes of this case, pointing out that the record is "exceptionally large," "by far the largest ever filed" in the court below, and that further proceedings "are hardly likely to cast any additional light on any of the issues."

And the Solicitor General, in his brief, says (p. 19): "In the present case, the record shows that a substantial part of the dues and fees to be collected from appellees will be expended for disputed legislative and political purposes."

(p. 23) *"A. The disputed political and legislative expenditures cover a broad spectrum of activities, and at least some of them raise delicate constitutional issues."* (Footnote continued)

A. Under Well-Settled Principles of Adjudication, the Judgment for Individual Appellees Must Be Affirmed if Any of the Several Grounds for Relief Is Established.

It appears that the Solicitor General based his suggestion that the Court at this time avoid passing on the constitutional question on the success of the appellees in proving that their constitutional rights were invaded by a variety of means and methods. These methods (described in the Solicitor General's brief at pp. 25-28) range from direct contributions to the campaign funds of candidates for public office to propaganda expenditures of the same types as are commonly made by candidates themselves, and to the maintenance of registered legislative lobbyists to oppose or support action on diverse issues affecting not only the union members as employees, but also the general public.⁹ Upon the assumption that "at least in some instances" (p. 28) the appellees' constitutional rights must be "balanced" against some other supposed interests,¹⁰ the Solicitor General says that the various devices of political action "may well involve differing considera-

(p. 28) "... the issues raised by the parties are of great constitutional importance, ..."

(p. 51) "... the case presents a spectrum of constitutional problems."

⁹ A comprehensive analysis of the uncontradicted evidence of record before this Court conclusively establishing these various devices for channeling appellees' dues and fees into political and ideological uses will be found at pages 9a-32a in the appendix of our main brief, and in Parts I and II of that brief we submit to the Court the precedents and authorities establishing that such conduct infringes rights guaranteed appellees by the Bill of Rights.

The complete original transcript of record (including virtually all of the evidence presented to the trial court) has been certified to this Court by the Supreme Court of Georgia and is on file in the office of the Clerk of this Court.

¹⁰ The lack of foundation for this assumption of "balancing" is discussed below in section I D, at pages 31-36 of this brief.

tions" (brief, p. 18). It seems to follow, in his view, that this Court ought to decide those secondary issues before it can decide the fundamental issue presented by the record in this case. Even if that misconception were accepted, the record now before the Court nevertheless would be fully adequate for the task. Each pattern of activity has been proved in detail.

But of course the Solicitor General's premise is wrong. We have here but a single, integrated mechanism (Stipulation, paragraph 20, R. 176), with numerous parts, designed to achieve the common purpose, the support of all employees of the appellants' political and ideological goals regardless of the unwillingness of the employees to support such goals.

However, accepting momentarily for purposes of argument the Solicitor General's view of the evidence, it is clear that if the judgment under review rests upon several grounds which the trial court finds to be established, it may be affirmed if any one of those grounds is sufficient to support the judgment. *Baker v. State*, 90 Ga. 153, 15 S.E. (1892); *Guffin v. Kelly*, 191 Ga. 880, 890, 14 S. E. 2d (1941); *Davis v. Packard*, 31 U.S. 41, 6 Pet. 312 (1833); *Helvering v. Gowran*, 302 U.S. 238 (1937); *Jaffke v. Dham*, 352 U.S. 280 (1957). Even if, contrary to fact, the record were considered inadequate in some undetermined respect relating to one or more of the appellant unions' variegated political activities, the case would still stand for decision by this Court upon those multiple wrongdoings adequately supported by the record now before this Court.

The brief of the Solicitor General is devoid of any identification of the supposed variable considerations that might differentiate the assorted political and ideological expenditures made by the appellant unions. No hint is offered in his brief of any relevant evidence¹¹ which might have been

¹¹ See Section I E, pages 36-43 below.

introduced but is not contained in the full and detailed record now before the Court. His misgivings seem to flow rather from the fact that neither the parties nor the courts below have felt compelled to draw fine distinctions among the various expenditures.

As to the parties, the Solicitor General's discontent appears to be based upon the fact that the individual appellees and the appellant unions are too much in disagreement. The unions boldly and absolutely take the stand that they may use funds collected through government compulsion for *any* political or ideological purpose they choose, subject only to applicable statutory restrictions, and recognizing no limits in the Constitution.²² The individual appel-

²² This is emphasized in the following quotations:

(Main brief of appellant unions, p. 19) "Section 2, Eleventh intentionally imposes no limitation on the purposes for which dues collected under a union-shop agreement may be spent."

(Main brief of appellant unions, p. 26) "The construction that Section 2, Eleventh of the Railway Labor Act places no limitations upon the uses which may be made of dues and fees collected under union shop agreements is in accord with Congressional intent."

(Main brief of appellant unions, pp. 19-20) "• • • an employee has no constitutional right to work for a specific employer without having his dues used in part for political or legislative purposes with which he disagrees."

(Main brief of appellant unions, p. 27) "There is no condition or limitation based upon the use to which the labor organization puts the fees, dues, and assessments. Congress, when it was holding hearings on and debating the Union Shop Amendment to the Railway Labor Act, repeatedly had urged upon it the argument that it was unfair to require an employee as a condition of employment to pay dues and fees which are used for political, legislative, or insurance arrangements with which the employee is in disagreement."

(Main brief of appellant unions, p. 29) "In view of the foregoing, it is plain that Congress was aware of the arguments with respect to use of fees and dues collected through union shop agreements and deliberately refrained from imposing any restriction on

lees take the firm position that to compel them to with the fruits of their labors, political candidatures, and policies which they oppose constitute a fringement of their rights secured by the First and Second Amendments, no matter what subterfuge is resorted to.

the use of such funds for purposes to which an employer would be opposed."

(Main brief of appellant unions, pp. 30-31) "Since this case has been pending, an effort has been made in Congress to secure enactment of legislation giving the plaintiffs what they have sought in this case. In rejecting such legislation Congress made it plain that it was opposed as a matter of course to enabling employees to interfere with the unions in the use of dues, and assessments for any lawful purpose for which the unions may expend its funds."

(Main brief of appellant unions, p. 61) "Political activity is the expansion of legislative activity beyond mere business and labor issues for railroad unions have been the necessary consequences of effective legislative activity and the type of employment relationship which the agreed upon legislation has established."

(Appellant unions' response, p. 2) "Congress Committed That the Unions Would Make Such Expenditures and Three Times Has Refused to Restrict Them or to Give the Unions Members Protection Against Them."

(Appellant unions' response, p. 4) "Plainly it was the policy of Congress that these unions engage in these activities and Congress has refused to restrict them while permitting a union shop to exist. There can be no escape from the conclusion that when Congress adopted the policy of permitting railroad unions to negotiate union agreements, that policy was to permit such agreements to be functioning as they had been functioning for many years. That the permission was not conditioned upon the unions making radical and impractical revisions in the way they operate."

(Appellant unions' response, p. 5) "But the nature of the union activities to which a dissident union member would be opposed is not relevant to the constitutionality of the law. Subject to a union shop and being required to pay dues, it can be held that his employment can constitutionally be conditioned on his paying dues part of which is spent for any purpose which the union opposes."

(Main brief of AFL-CIO, AS AMICUS CURIAE, p. 10) "To determine the proper objects of this 'labor state' or 'labor state' is to determine the proper objects of this 'labor state' or 'labor state'."

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the disposition of the funds and no matter what guise the financial support may take. The parties have thus met head on in a direct conflict of views.

The Solicitor General's suggested solution, if espoused would reward the appellant unions in proportion to the arrogance of their position. Had they conceded, as does the Solicitor General, that some of their admitted activities raise serious constitutional questions,¹³ and concentrated their arguments upon an attempt to resolve them, the Solicitor General apparently would not have proposed that this Court avoid the issue. Since they boldly refuse to concede any constitutional qualification whatever to their power over the dues and fees paid by appellees, the Solicitor General advises the Court that the appellants should escape judicial scrutiny of their actions.

B. This Court Is Not Obligated to Declare in Advance Details of the Rules Which May Govern All Future Contingencies.

The Solicitor General seems to suppose that no decision can be rendered in this case unless every possible political

government instrumentality which we are now assuming a union is, and to determine what means may reasonably be selected to attain those objects, one must look to the needs of laboring men.

(Main brief of AFL-CIO, AS AMICUS CURIAE, p. 2) "The court below held, inter alia, that the use of union funds for the promotion of political programs opposed by the appellees, where such funds are collected by virtue of union shop agreements permitted under section 2, Eleventh, of the Railway Labor Act, violate appellees' rights under the First and Fifth Amendments to the Constitution of the United States (R. 249-250). This brief will concentrate on these startling constitutional propositions."

¹³The Solicitor General observes (brief, p. 22): "At the same time we believe that the unions do have a responsibility toward dissenting members in taking 'political' action."

He continues (brief, p. 23): "The disputed political and legislative expenditures cover a broad spectrum of activities, and at least some of them raise delicate constitutional issues."

use to which the appellants might put the money collected is considered and its legality or illegality. But no rule is more firmly established or so observed in the work of the Court than that when a decision of constitutional questions unnecessary to the disposition of the case. *Railway Employees' Dept.*, 351 U.S. 225 (1956), is only one of the many decisions applying the principle. See the cases collected in *States v. Rumely*, 345 U.S. 41 (1953). In obedience to a command, this Court may not, and the court below may not, issue a catalog of political activities and expenditures, past, present, and prospective, with a condescending blessing for each.¹⁴

Precisely because the court below did not incline to a supposititious tabulation, and because this Court without the aid of that court's advisory opinion, in giving its own, the Solicitor General says that the court should set aside the decree and leave the appellants to seek relief. The very device suggested by the Solicitor General, however, has been condemned by this Court. The coming charged to the court below is the failure to set aside each separate form of political action, and to prohibit and advance those expenditures which may be made for each which may not. In short, the court below, it should have formulated a comprehensive code for the financial affairs of the appellant unions, and to detail the conditions under which they may collect and expend moneys of dissenting employees. In *Hague v. Board of Industrial Organization*, 307 U.S. 496 (1939), the court undertook to pursue such a course. In granting an injunction against unlawful governmental action

¹⁴ Of course, we do not concede that any political action conditionally can be made of appellees' dues and fees without their consent.

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to specify the conditions under which the defendants
act without infringing the plaintiffs' First Amend-
rights. This Court reversed, holding the decree imp-
(307 U.S. at 518):

"The decree attempts to formulate the conditions
which respondents and their sympathizers may
tribute such literature free of interference. . .
think the decree goes too far. All respondents
entitled to is a decree declaring the ordinance
and enjoining the petitioners from enforcing it.

" . . . Although the court below held the ordi-
void, the decree enjoins the petitioners as to the m-
in which they shall administer it. There is an
command that the petitioners shall not place
previous restraint' upon the respondents in re-
of holding meetings provided they apply for a p-
as required by the ordinance. This is followed
enumeration of the conditions under which a p-
may be granted or denied. We think this is w-
As the ordinance is void, the respondents are en-
to a decree so declaring and an injunction again-
enforcement by the petitioners."

In numerous other situations where governmental
has exceeded constitutional bounds and has thus imp-
First Amendment rights, this Court has declared su-
tion unconstitutional without attempting to define,
quire the lower courts to define, the precise limits v-
which action could be taken constitutionally. See, f-
ample, *Grosjean v. American Press Co.*, 297 U.S. 233 (1-
Lovell v. Griffin, 303 U.S. 444 (1938); *Schneider v.*
Jersey, 308 U.S. 147 (1939); *Thornhill v. Alabama*
U.S. 88 (1940); *Cantwell v. Connecticut*, 310 U.S.
(1940); *Murdock v. Pennsylvania*, 319 U.S. 105 (1-
Martin v. Struthers, 319 U.S. 141 (1943); *Jones v. Op*
319 U.S. 103, (1943); *Hill v. Florida*, 325 U.S. 538 (1-
Wieman v. Updegraff, 344 U.S. 183 (1952); *Talley v.*
ornia, 362 U.S. 60 (1960). In each of these cases

others which could be cited, this Court announced applicable basic constitutional principles, established general guidelines to distinguish between constitutional and unconstitutional action, and stated in effect that no statute, ordinance or other governmental action could be narrowed to comply with the Constitution. In *Shelton*, the Court granted immediate, direct and affirmative relief to those affected by the sweepingly unlawful governmental action. In no case did the Court withhold relief from a lower court determined in all conceivable detail to have acted covered by the governmental action could be restrained.

Most recently, this Court followed the same course in approving injunctions against governmental action that impinged on constitutional rights, even though the Court recognized that the statute, if more narrowly applied, would be constitutional. In *Shelton*, 354 U. S. 311, 21 U. S. Sup. Ct. Bulletin 245, 252-253, 254 (1957), 83, December 12, 1960) the Court stated as follows:

"The question to be decided here is not whether the State of Arkansas can ask certain of its teachers to disclose all their organizational relationships. It is not whether the State can ask all of its teachers about their associational ties. It is not whether the State can be asked how many organizations they belong to, or how much time they spend in organizational activities. The question is whether the State can ask each of its teachers to disclose every single organization with which he has been associated over the past ten-year period. The scope of the inquiry required is completely unlimited.

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"In a series of decisions this Court has held that even though the governmental purpose be legitimate and substantial, that purpose cannot be achieved by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.

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"As recently as last Term we held invalid
nance prohibiting the distribution of handbills
the breadth of its application went far beyon
was necessary to achieve a legitimate govern
purpose. *Talley v. California*, 362 U.S. 60.
case the Court noted that it had been 'urged
ordinance is aimed at providing a way to identi
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the ordinance is in no manner so limited . . . T
we do not pass on the validity of an ordinance
to prevent these or any other supposed evi
ordinance simply bars all handbills under all
stances anywhere that do not have the nar
addresses printed on them in the place the o
requires.' 362 U.S. at 64.

"The unlimited and indiscriminate sweep of
ute now before us brings it within the ban of o
cases. The statute's comprehensive interference
associational freedom goes far beyond what m
justified in the exercise of the State's legitimate
into the fitness and competency of its teachers

The dissenting Justices did not object to the a
the majority on the ground that there was any s
duty on the part of the trial court to separate all cor
lawful restraints from unlawful ones and enjoin
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statute should not be enjoined until it was de
that it actually infringed the rights of some A
teacher.

Here it has been established beyond doubt
rights of the individual appellees have been imp
a result of governmental action. Therefore, in l
the principle established in the *Shelton* case, an
numerous other cases cited above, the unconst
governmental action was properly enjoined by
court, and there is no necessity for a preliminary
definition of the precise line of demarcation betw
ful and unlawful restraints.

*Certainly this Court is not deprived of the clear-cut, concrete dispute presented in the cause the court below has faithfully observed the judicial power as set out in the *Hague* authorities, and has not undertaken to dispute of hypothetical, speculative, and uncertainties.

C. The Decree Properly Defers Details for Further Hearing in Accordance with Established Equitable Principles.

As demonstrated in the immediately preceding this brief, the trial court acted in accordance with judicial precedents in enjoining the conduct of unions which infringes the constitutional rights of the appellees. However, the court retained jurisdiction or even vacate the injunction upon a showing that it would be appropriate (R. 106).

In so declaring and protecting basic rights, retaining jurisdiction to consider subsequent proposals for modification, the trial court also applied constitutional equity principles, often applied to executive commands.

A conspicuous example of such a preliminary decision of constitutional rights accompanied by a decision on details is *Brown v. Board of Education*, 347 U.S. 483 (1954), and 349 U.S. 294 (1955).

In the *Brown* case, the Court was presented with a constitutional claim made, as here, on behalf of persons similarly situated. The defendants took a flat position, like that taken by the appellants, that their action in segregating public schools according to race infringed no constitutional

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In the face of the bald claim of power by the de-
 this Court limited the first phase of the litigation
 declaring the fundamental principle." 349 U.S. at
 tails were left for later disposition.

In the *Brown* case, this Court was not preven-
 declaring the basic constitutional principle by
 that varying considerations might affect its ap-
 Not every refusal to enroll a Negro child with v-
 dents would offend the Constitution, as the Cou-
 nized. Considerations of geography and the loc-
 the child's residence, of the physical capacities
 educational facilities, of the intellectual attainm-
 aptitudes of the pupil, and of the necessities of or-
 systematic transition, all might enter into the de-
 to lawfulness of a particular action by the loc-
 authorities. By the same token, even if it were
 the Solicitor General argues, that varying consi-
 may affect the legality of differing activities, t-
 below and this Court are not deprived of power t-
 the fundamental rights. As this Court observe
 first opinion in the *Brown* case (347 U.S. at 495)

"Because these are class actions, because of
 applicability of this decision, and because of
 variety of local conditions, the formulation o-
 in these cases presents problems of consider-
 plexity. On reargument, the consideration o-
 priate relief was necessarily subordinated to
 mary question—the constitutionality of segre-
 public education. We have now announced
 segregation is a denial of the equal protecti-
 laws."

After declaring the basic constitutional princip-
Brown case, this Court placed the responsibility
 defendants, the local school boards, for devising
 senting a plan of compliance (349 U.S. at 299):

"School authorities have the primary responsibility for elucidating, assessing, and solving these problems: courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles."

In the instant case, the courts below have followed this Court's precedent, by first declaring the basic constitutional rights (and also protecting those rights in a manner not immediately feasible in the *Brown* case) and then imposing upon the appellant unions the responsibility, in the first instance, of devising and presenting a plan of operation that will implement and protect those rights. To the degree the Constitution permits, the appellants should be permitted to govern their own affairs, to arrange for the handling of financial resources in the manner most convenient to union structure and operations, and to decide through what channels their funds should be disbursed in the exercise of proper powers. No more effective means could be devised to reconcile the interests of the appellant unions with the rights of the individual employees than to leave the primary responsibility for the solution in its details with the organizations themselves.

"The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public and private interest and private needs as well as between competing private claims." *Hecht Co. v. Bowles*, 321 U.S. 321, at 329 (1944). *D.*

Under the circumstances of this case, as in the *Brown* proceedings, no other means of working out the details of the decree would be feasible or in accord with the practicalities of the situation. A schoolboy can hardly be ex-

pected to present a plan for the revised operation of the public school system. A reluctant union member, forced to join against his will, cannot, consistently with the commands of a court of conscience, be burdened with the duty to devise a reorganization of the complex financial structure of the appellant unions. If equity is to be done, the appellants must come forward with the plan, as the court below has decreed, in accordance with this Court's guidance.

D. The Rights of the Individual Appellees Under the First Amendment Are Not Subject to "Balancing" Against Other Interests.

The Solicitor General's brief suggests that each of the various means by which the appellant unions have devoted the dues and fees paid by the individual appellees to candidates and policies they oppose should have been separately considered by the parties in their arguments and by the court below upon the assumption that the determination of the individual's right not to be compelled to support beliefs or programs which he opposes is to be weighed against "conflicting interests". The Solicitor General seems to believe that the sacred rights of thought and belief and expression may sometimes win and sometimes lose in contest with these conflicting interests (Solicitor General's brief, pp. 28-29).

The brief does not make clear what these "conflicting interests" might be. Certainly they are not the interests of the public for, as this Court repeatedly has declared, the interest of the public, in an enduring and vital society, is in the free and untrammelled exercise of First Amendment rights. See Green, *The Right to Communicate*, 35 N.Y.U.L. Rev. 903, at 903-904 (1960).¹⁵ Nor is there conflict with

¹⁵ " . . . Furthermore, in the area of free speech the interests of the particular individual are not weighed against those of the state; rather, the interest of the community at large in 'free trade

any supposed interest in the preservation of industrial peace, or with the interest of union members who subscribe to their leaders' views in collective political activity. Despite the intimations to the contrary (Solicitor General's brief, pp. 28-29), the decree entered below does not in any way impede the appellant unions from carrying out their legitimate responsibilities in the field of collective bargaining, nor does it limit in any respect the power of willing members to make *voluntary* contributions, in concert if they wish, to support their favored political candidates or programs. The only interest that could be regarded as "conflicting" would be an interest of some union members to support their own political beliefs with funds contributed by other employees who disagree with them. On any assumed scale of interests, one man's desire to compel others to support his beliefs can hardly weigh heavily.

A more fundamental defect in the argument is the facile assumption that the individual's right not to affirm or support a political party or program which he opposes is subject to any "balancing" at all. That assumption recently has been commented upon by Mr. Justice Black, *The Bill of Rights*, 35 N.Y.U.L. Rev. 865, 874-875, 878-879 (1960) who declared:

"To my way of thinking, at least, the history and language of the Constitution and the Bill of Rights which I have discussed with you, make it plain that one of the primary purposes of the Constitution with its amendments was to withdraw from the Government all power to act in certain areas—whatever the scope

in ideas' is one side of the balance. Therefore, unlike, for example, a statute depriving a defendant of his right to a fair trial, an ordinance abridging freedom of discussion inevitably presents generalized issues not set against the background of the facts of a particular case. As a consequence, there is less danger that 'premature' determination will in the end prove to be ill-advised. Note, *The Supreme Court, 1959 Term*, 74 Harv. L. Rev. 81, 130-131 (November 1960).

of those areas may be. If I am right in this then there is, at least in those areas, no justification whatever for 'balancing' a particular right against some expressly granted power of Congress. If the Constitution withdraws from Government all power over subject matter in an area, such as religion, speech, press, assembly, and petition, there is nothing over which authority may be exerted."

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"It seems to me that the 'balancing' approach also disregards all of the unique features of our Constitution which I described earlier. In reality this approach returns us to the state of legislative supremacy which existed in England and which the Framers were so determined to change once and for all. On the one hand, it denies the judiciary its constitutional power to measure acts of Congress by the standards set down in the Bill of Rights. On the other hand, though apparently reducing judicial powers by saying that acts of Congress may be held unconstitutional only when they are found to have no rational legislative basis, this approach really gives the Court, along with Congress, a greater power, that of overriding the plain commands of the Bill of Rights on a finding of weighty public interest. In effect, it changes the direction of our form of government from a government of limited powers to a government in which Congress may do anything that Courts believe to be 'reasonable'."

Similar views are found in numerous opinions of this Court and the members thereof. For example, in *Murdock v. Pennsylvania*, 319 U.S. 105, 115 (1943), the majority of the Court stated: "Freedom of press, freedom of speech, freedom of religion are in a preferred position." In *Speiser v. Randall*, 357 U.S. 513, 530, 531 (1958), the concurring opinion states:

"We should never forget that the freedoms secured by that Amendment—Speech, Press, Religion, Petition and Assembly—are absolutely indispensable for the preservation of a free society in which government is

based upon the consent of an informed citizenry and dedicated to the protection of the rights of all, even the most despised minorities."

"... As stated in prior cases, I believe 'that the First Amendment grants an absolute right to believe in a governmental system, [to] discuss all governmental affairs, and [to] argue for desired changes in the existing order.'"

Again in the concurring opinion in *Bates v. Little Rock*, 361 U.S. 516, 528 (1960), it is stated:

"Moreover, we believe, as we indicated in *United States v. Rumely*, 345 U.S. 41, 48; at page 56 (concurring opinion), that First Amendment rights are beyond abridgment either by legislation that directly restrains their exercise or by suppression or impairment through harassment, humiliation, or exposure by government. One of those rights, freedom of assembly, includes of course freedom of association; and is entitled to no less protection than any other First Amendment right. . . ."

Clearly rights such as these cannot be "balanced" against mere "interests" which have no constitutional basis. That the "interests" of the unions which the Solicitor General seeks to "balance" against the constitutional rights of the employees are not entitled to constitutional protection was established by this Court in *Lincoln Federal Labor Union v. Northwestern I. & M. Co.*, 335 U.S. 525 (1949), in response to an argument by the unions that state right-to-work laws were unconstitutional because they deprived union workers of a claimed constitutional right to force others to join the union or give up their jobs. This Court said (335 U.S. 531):

"We deem it unnecessary to elaborate the numerous reasons for our rejection of this contention of appellants. Nor need we appraise or analyze with particularity the rather startling ideas suggested to support

some of the premises on which appellants' conclusions rest. *There cannot be wrung from a constitutional right of workers to assemble to discuss improvement of their own working standards, a further constitutional right to drive from remunerative employment all other persons who will not or can not participate in union assemblies.* The constitutional right of workers to assemble, to discuss and formulate plans for furthering their own self interest in jobs cannot be construed as a constitutional guarantee that none shall get and hold jobs except those who will join in the assembly or will agree to abide by the assembly's plans. For where conduct affects the interests of other individuals and the general public, the legality of that conduct must be measured by whether the conduct conforms to valid law, even though the conduct is engaged in pursuant to plans of an assembly" (italics added).

If, as was thus settled in *Lincoln Union*, union employees do not have a constitutional right to force others to join the union, *a fortiori* they have no right to force others to contribute to the union's political activities as the price of continued employment. The force of *Lincoln Union* and its necessary implications appear to have escaped the Solicitor General.

Whatever the power of government to silence speech which does affirmative harm, as obscenity or advocacy of forcible overthrow of the government, there is no interest that "conflicts" with the right of the individual (as here) to remain silent, to decline to affirm or manifest support for any prescribed orthodoxy or majority view.¹⁶

¹⁶ The appellant unions, attempting avoidance of the First Amendment, state (responsive brief, p. 7):

"Nothing that the union publishes or espouses or otherwise supports prevents any dissident member from doing anything, while, on the other hand, restricting the majority in engaging in such activities might well infringe their First Amendment

In this area, the concept of "balancing" can have no proper application. To refuse any decision upon individual appellees' claims so that further litigation, could bear the expense of it, would bring each separate expenditure sharply into focus" for "balancing" against appellees' right not to support the political views of (Solicitor General's brief, pp. 47., 29) would be a and fatuous mockery.

E. The Claimed "Deficiencies" in the Record Are Wholly Irrelevant to the Constitutional Issues.

The Solicitor General suggests only four related questions upon which it is claimed the record be "deficient" for constitutional adjudication.* First it is that (brief, p. 14) there is a deficiency in that the

rights. See *United States v. C.I.O.*, 335 U.S. 106, 120. The individual dissident is as free as before to read, wants, to think what he wants, to listen to what he wants, say what he wants, etc.; the only requirement of the shop is that he contribute to the funds of the union, get spent as a majority wishes within such limitations. Congress sees fit to and may constitutionally impose.

The fact that one of Jehovah's Witnesses, required to only a moment each school day in saluting the United States (against his religious convictions); was free for many other of each day during which to salute another flag of his choice, no flag at all, did not mitigate the wrong inflicted upon him. *Virginia State Board of Education v. Barnette*, 319 U.S. (1943). The fact that a Moslem is generally free to worship at the altar of his own religion would not remove or mitigate constitutional objection to our government's requiring worship one minute of each day in the Christian faith. Congress has no power to modify the plain commands of the First Amendment in respect to religion or belief. It is bravado for the unions, in relation to union shop practices (responsive brief, p. 7): "... restricting the majority in such activities might well infringe their First Amendment rights." When once the unions won the union shop contract, accepted a governmental stewardship and thereafter were to conform to the restrictions of the First Amendment precisely as if they were the government itself.

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does not reveal the number of employees of the railroad who voluntarily joined appellant unions or the number" who were required to join under the union shop agreement. Such a suggestion implies that human beings may be subject to the doctrine of *de minimis*; and that the rights of the individual alone, or of a relatively small minority, may be ignored if the opposing majority is large enough.¹⁷ The assumption is at war with the whole conception of constitutional government, and would make of the Bill of Rights a travesty. So long as one man is willing to stand up for his rights, it matters not a whit how many of his fellows are willing to be enslaved. The six appellees now before this Court are six times enough to invoke the full panoply of constitutional power in support of their individual rights, whether there be a single other employee who shares their determination to vindicate the integrity and the dignity of the individual. And the Stipulation shows (Paragraphs 5 and 6; R. 166) that a substantial number of the affected employees were required to join the union again.

¹⁷ Because of the total irrelevancy of the precise ratio of diversity of belief among the membership of the appellant unions, the arguments and the briefs, both in this Court and below, have used the terms "majority" and "minority" somewhat loosely to characterize the dominant forces in the union on the one hand and the individual members who disagree with union orthodoxy on the other. No evidence in the record indicates whether this so-called "minority" comprises 51% of the membership, or only the union officers and leaders in control for the time being without regard to the rank-and-file. The statements in the Solicitor General's brief to the effect that approximately 75% to 80% of railroad employees were voluntary union members (brief, pp. 14, 35) are based solely on an unsupported estimate made before a Congressional committee, and do not constitute evidence in any sense. Moreover, the estimate does not even purport to indicate how many union members are willing to contribute funds for political use. It should be noted, in addition, that since the enactment of Section 2, Eleventh, and the execution of union shop agreements, all members are forced to remain such, and none can fairly be called "voluntary".

their will and other substantial numbers lost their employment—all because of the union shop contract.¹⁸

The same absolute lack of relevance characterizes the second “deficiency” claimed by the Solicitor General (brief, p. 14), that the record shows only that the number of employees who object to the unions’ use of dues for political purposes is “substantial”, and does not give a precise count or reveal the craft or classification of those they belong to or the states in which they reside. If these facts² could possibly enter into the determination of the constitutional issue is not explained. It cannot be supposed that whether an employee is a clerk or a craftsman or resides in Virginia or Georgia will affect the protection afforded by the First Amendment.¹⁹ Such a claim is completely without relevance to any question presented in the case.

As the third supposed “deficiency” in the record, the Solicitor General suggests (brief, p. 14) that t

¹⁸ No question has been raised as to the capacity of the named appellees to represent other employees of the Railway System who were unwilling to join the union voluntarily and who object to political use of their dues and assessments. The Solicitor General does not suggest otherwise (brief, p. 13). The courts below found specifically that the action was proper and the representation adequate (R. 263-64). The appellants have stipulated to the same (R. 166-67). (See *Bates v. Little Rock*, 361 U.S. 516, at 523, n. 1). As this Court demonstrated in *Brown v. Board of Education*, 347 U.S. 483 (1954); 349 U.S. 294 (1955), there is no need for a poll of all persons similarly situated before the issue in a class suit may be decided. The precise number is not determined, if necessary, in subsequent proceedings brought by members of the class. See *Felter v. Southern Pacific Co.*, 326 F.2d at 329-30 (1959); *Frasier v. Board of Trustees*, 326 F.2d at 326 (1956), affirming *per curiam* 134 F. Supp. 589 at 593 (1955). In any event, one plaintiff is enough. *United Workers v. Mitchell*, 330 U.S. 75 (1947).

¹⁹ See pages 46-63 of our main brief for discussion of the fact that the union shop contract involves governmental action apart from individual state right-to-work laws.

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 or a sum accurate to the penny would have is not sugge-
 If the appellant unions use seventy percent or fifty
 cent or twenty percent, the constitutional question is
 altered. To require the individual appellees to cond-
 detailed audit with cost-accounting procedures in ord-
 entitle them to a decision upon their rights is hardly
 sistent with the traditions of a court of equity. The
 court found specifically that the appellants had so
 mingled funds that contributions of the appellees coul-
 be traced in detail. If any penalty is to be visited fo-
 lack of detailed evidence on the question, if it is rel-
 at all, it is the appellant unions, with ready means of a-
 to the information, who should be burdened, and who s-
 be subjected to a presumption against them.

The suggestion of the Solicitor General is incons-
 with the historic origins of the First Amendment. In
 conservative members of Virginia's General Assemb-
 introduced a bill providing for a tax for the maintenanc-
 religion. I Stokes, *Church and State in the United S*
 387 (1950). The opponents of this measure were led
 James Madison, whose "Memorial and Remonstranc-
 Against Religious Assessments" is one of the great cl-
 in the struggle for freedom of conscience. Its mass-
 summary of objections brought about, in October, 1789,
 defeat of the bill against which it was directed. I S-
supra, at 391. Among other things, Madison, in this
 "monstrance", said:

"Who does not see that . . . the same auth-
 which can force a citizen to contribute 3 pence
 of his property for the support of any one esta-
 ment, may force him to conform to any other

lishment in all cases whatsoever." I St
at 391.

The enduring principle so declared was later in Jefferson's Virginia Act for Religious Freedom provided the moving force for the adoption of the First Amendment. This history is authoritative on the meaning and purpose of that Amendment. *Reynolds v. U.S.*, 98 U.S. 145, 163-64 (1878); *Everson v. Board of Education*, 330 U.S. 1 (1946). In sum, the first purpose of the First Amendment is to forbid exactions, however petty, that would propagate ideas contrary to the individual's conscience.

Fourth and finally, the Solicitor General's brief (brief, p. 14), of the lack of evidence of "the effect of segregating the dues and fees of individual appellants from other dissenters, so that their money would not be used for political and legislative purposes—assuming, of course, that such segregation was necessary or desirable" (brief, p. 14, added). The appended assumption belies the sufficiency of the evidence. If the matter warrants investigation, it can be considered by the trial court upon the appellants' submission of a plan of compliance, under part I C above. Inconvenience in bookkeeping is not in any view outweigh constitutional rights. The feasibility of such segregation cannot be viewed in light of the appellees' claim. In any event, the burden of proof forward on such an issue must rest with the appellants, and their failure to meet it is no reason for reversing the judgment. The individual appellees by reversing the judgment the appellants arrogantly have said that they need

²⁰ The Act, preserved as Section 57-1, Virginia Code, declares "that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and tyrannical . . ."

²¹ *Cf. Fetter v. Southern Pacific Co.*, 359 U.S. 32

Stokes, *supra*.
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no one for a single penny of the funds exacted from
 vidual appellees which have been expended for po
 purposes.

While, as this Court held in *Railway Employees' D
 Hatson, supra*, an employee can constitutionally
 pelled not only to accept a union as his collective barg
 agent (when it has been chosen by a majority of l
 workers) but also can be forced to bear his share
 proper expenses incurred in the course of that barg
 there is a wide gulf separating collective bargainin
 political activity. The Solicitor General and app
 span that gulf too easily with an assumption that p
 activity which might be thought by some to be in the
 est of employees is therefore within the realm of col
 bargaining.

That assumption is invalid. A union, it is true,
 pursue an objective such as unemployment compen
 either through bargaining with employers or through
 ment of legislation. Yet, while these may be means
 proximately the same end, they are very different and
 to bear very different considerations—all of which ar
 ent in the case at bar. For a union to bargain for
 with his employer is one thing. For it to determin
 is best for him politically is quite another thing. T
 tain the latter, the Court would have to turn its back
 solemn pronouncement, in *West Virginia State Bo
 Education v. Barnette*, 319 U.S. 624, 642 (1943), th

"If there is any fixed star in our constitutional
 stellation, it is that *no official, high or petty, ca
 scribe what shall be orthodox in politics, nation
 religion or other matters of opinion or force c
 to confess by word or act their faith therein*. If
 are any circumstances which permit an exception
 do not now occur to us" (italics added).

With respect to political activities by the union, the Solicitor General states (brief, p. 26), "the question of dispute apparently revolves primarily around the publication of periodicals and their contents."

This simply is not true, as reference to the record demonstrates. At the national level, appellants use ways other than in periodicals to support or oppose legislation, support or oppose candidates for office, and support the national committee of one political party. (See, with respect to the National Executives' Association, Stipulation, paragraph 28, and with respect to Railway Labor's Political Action Committee, Stipulation, paragraphs 28-42, all at R. 18.)

There is good reason to doubt whether the Solicitor General believes very strongly that a line should be drawn dividing valid and invalid political activities. The distinction between political activities by a union from regular dues and fees exacted from members under a union shop agreement authorized by the National Labor Relations Act, Eleventh. Thus, on page 31, for example, he states that "the considerations *may well* apply to the question of expenditures and activities" of appellants. On page 32, he states that the various kinds of political activities and expenditures "*probably* should be placed in one basket for analytical or constitutional purposes" (italics added). Page 33 of his brief contains several equivocal expressions—"may involve different considerations . . . may conflict with . . . may be met with different treatment . . . may be subject to different treatment . . . constitutional treatment different from . . ." Summarizing on page 34, the Solicitor General states that "the question of the legality of these various union activities *may well turn on* differing and *perhaps* different considerations" (italics added).

If, however, the record *were* inadequate in this respect, the proper course would not be

the national unions, 26), that "the area ly around the pub- ts."

o the record quickly pellant in diverse t or oppose federal s for political office, one major national the Railway Labor paragraphs 25-27, Political League, 182-187).

r the Solicitor Gen- e should be drawn ities when financed exacted from mem- orized by Section 2, e, he says that "dif- the various classes ants (*italics added*). kinds of union ac- ould not be treated tutional purposes" f is replete with different considera- e more difficult might be given " And, sum- eral says that "the union expenditures ps conflicting con-

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Solicitor General has suggested to the Court. In an sional case, where the claim was premature and abstract as to cast doubt on the existence of a justiciab troversy, this Court has found the record inadequate constitutional decision. See, *e.g.*, *Rescue Army v. Municipal Court*, 331 U.S. 549 (1947). But the critical consequence such a conclusion has been entirely overlooked by the tor General. In such a case, the appropriate action f Court is *dismissal of the appeal*. The Court thus d to exercise the judicial power, and leaves the parties the state court has placed them. The decision be neither affirmed nor reversed. Such a disposition is pletely different from the course which the Solicitor eral now advises. He does not suggest that this should decline to exercise its powers; on the contra proposes that the Court should employ the most radic disruptive power it possesses—the authority to s naught the solemn decision of the highest court of a Words cannot be wrenched to equate reversal with a to exercise judicial power. To reverse is to decide, clearest, most unmistakable form. To ask the Court verse the decision in the guise of declining to act is vite this Court to dissemble. If the Solicitor General correct in his characterization of the record, the r would be the dismissal of the appeal.²²

F. Even If the Record Were Deficient for Constitutional Adjudication, the Decree Nevertheless Would Stand Upon Statutory Grounds.

The record below is more than sufficient to warra judication of all issues presented and argued. Eye

²² The disposition in *International Brotherhood v. Denver Producers, Inc.*, 334 U.S. 809 (1948), serves to illustrate the practice. The opinion states: "PER CURIAM: Because of the quacy of the record, we decline to decide the constitutional involved. *The appeal is dismissed . . .*" (*italics added*).

were deficient in some respects, however (as it clearly is not), reversal would not be called for. The detailed pleadings, the mass of evidence introduced, and the detailed findings of the trial judge offer a sound foundation for decision of the question as a matter of statutory interpretation, aside from constitutionality. The principles upon which the Solicitor General relies to excuse decision of constitutional questions can have no application when the question involves the construction of an act of the legislature. See, e.g., *Greene v. McElroy*, 360 U.S. 474, 492-493 (1959). The Solicitor General has argued (brief, pp. 19-20, 38-39) that Section 2, Eleventh, of the Railway Labor Act does not authorize the expenditures here in issue, but on the contrary impliedly prohibits them. As appears elsewhere in this brief, we disagree with the Solicitor General in this respect, but even if that argument were sound, the decree should be affirmed by this Court since the result is correct, despite the ground assigned for it in the court below. See cases cited page 20 above.

In *Boynton v. Virginia*, 29 U.S.L. Week 4049 (No. 7, December 5, 1960), the Court made its decision on statutory grounds although the case was decided below and argued in this Court on constitutional grounds. See also *Greene v. McElroy*, 360 U.S. 474 (1959).

II.

The decree was carefully fashioned and limited to the practical necessities of protecting the constitutional rights infringed.

The decree entered by the court below was fully and painstakingly considered and precisely tailored to the needs of the case. No different injunction could have been framed to safeguard the constitutional rights of all concerned.

Due respect for the rightful independence of the judiciary of the state in a federal system necessarily affords a wide latitude to the states and their courts in the field of remedies. Whether the relief given should follow the historic patterns of the courts of law or the courts of chancery is a matter for the state to decide, and is not a federal concern. In reviewing the decrees of the inferior federal courts, this Court properly exercises a general supervisory power over the administration of justice in the federal judicial system, but it has no such supervisory power over the administration of justice in the courts of the several states. When a state court decree comes before this Court, the question is not whether it would have entered the same decree, or even whether the decree is so ineptly drawn as to be erroneous and to constitute an abuse of discretion. The sole question is whether the state court, in exercising its independent power to select the form of relief believed to be appropriate has violated federal rights through the guise of its remedial procedures. *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312 U.S. 287, 296 (1941): "But we do not have revisory power over state practice, provided such practice is not used to evade constitutional guarantees."

The possibilities that a federal court might not have given the same remedy in the exercise of equitable powers, or

might have found the case not ripe for decision, or might have required the plaintiffs to submit a different prayer for relief,²³ are beside the point when the case has come from the courts of a state. All three possibilities were argued in *Nashville, C. & St. L. Ry. v. Wallace*, 288 U.S. 249 (1933), and all three were rejected. There the complaint and evidence before the state court would not have warranted equity relief in a federal court. The remedy given by the state court could not have been given by a federal court, since the judgment was merely declaratory, and the federal declaratory judgments act had not then been enacted. The prayer for relief there was inadequate and improper by federal standards. Yet this Court affirmed. Mr. Justice Stone, writing for a unanimous Court, declared the principles which refute the Solicitor General's arguments here (288 U.S. at 264):

²³ The Solicitor General's brief repeatedly suggests that the appellees must lose because their pleading did not conclude with "proper request for relief" and because of "the remedy sought and the theory of appellees' suit" (brief, pp. 22, 32). This anachronistic reversion to the rigidity of the forms of action has no place in equity procedures, and is at war with the moving spirit behind the Rules of Civil Procedure promulgated by this Court. More particularly, the argument violates the letter of Rule 54(c), which provides:

"... every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, *even if the party has not demanded such relief in his pleadings*" (italics added).

The Solicitor General would advise this Court to forbid the state to reform their procedures, and deny to Georgia the right to follow practices as liberal as this Court has prescribed for the United States District Courts. Moreover, the Solicitor General's argument wholly overlooks the fact that the relief requested was not narrowly limited to a prayer for a single and specified injunction. The appellees asked explicitly for "all other and further necessary relief to adequately protect their rights" (R. 14, 83-84). The trial court, under Georgia law, therefore had full power to award any relief to which the evidence might have shown the appellees to be entitled.

"Whenever the judicial power is invoked to review a judgment of a state court, the ultimate constitutional purpose is the protection, by the exercise of the judicial function, of rights arising under the Constitution and laws of the United States. The states are left free to regulate their own judicial procedure."

This Court's reviewing function concerning the form and scope of the decree is limited, too, by the traditional deference paid by an appellate court to the chancellor's discretion in framing an injunction. Having heard and weighed the evidence, the trial judge is especially well qualified to determine the precise limits of relief necessary to protect the prevailing party without undue interference with the defendant. Only if it appears that this discretion has been abused may the higher court inject its judgment. *Milk Wagon Drivers Union v. Meadowmoor Dairies, supra.*

The decree entered by the trial court contains a single functional prohibition. The appellant unions are prohibited from discharging the individual appellees for failure to pay dues, fees, or assessments imposed by the appellant unions. The prohibition is immediately coupled with an offer to the appellants to dissolve the injunction upon a requisite showing. In its effect, therefore, the decree resembles a preliminary injunction, to remain effective until further proceedings have run their course. The decree, by its terms, will last only until the appellant unions have made a showing that they will no longer conduct their operations so as to invade the constitutional rights of unwilling members (R. 106). For reasons apparent from the nature of the parties, any relief more limited or restricted would have failed utterly to protect the constitutional rights at stake.

A. An Injunction Against Collection Is the Traditional and Practical Remedy Against an Unconstitutional Assertion of Power to Exact Moneys.

In his brief, the Solicitor General seems to suggest the carefully drawn decree of the trial court should be altered because it is thought to be too broad. "It is difficult to understand," he says (brief, p. 40), "why the proper expenditure of a part of general dues funds should invalidate the entire agreement, [and] excuse appeal from paying any part of the fees, dues and assessments called for by the agreement. . . ." It is submitted that it is not difficult to understand the necessity for this result if one will but examine the practice of this Court in dealing with similar questions.

The Solicitor General's argument seems to assume that the individual appellees should have determined, by some undisclosed means, precisely how much the appellant union might legally have demanded to defray the proper cost of collective bargaining. But the appellant unions have taken and persist in taking the arrogant position that they may collect and spend dues, fees, and assessments under a union shop agreement for *any* political purpose they choose, without limit or qualification. In the face of this position, the individual appellees should not be compelled to bear the burden of amending the unions' policies to bring them within the confines of the Bill of Rights. It is not incumbent upon the individual, subjected to an asserted power which transcends constitutional limits, to prove precisely how far the governmental power might have been extended if the policy had been revised and changed. "does not have to sustain the burden of demonstrating that the State could not constitutionally have written a different and specific statute" *Thornhill v. Alabama*, 310 U.S. 88, at 98 (1940). See *Talley v. California*, 362 U.S. 60 (1960).

In the realm of money exactions, the traditional remedy, both in this Court and elsewhere, has been to enjoin the collection *in toto* if the power asserted by the demanding agency exceeds constitutional bounds. It has never been thought relevant that some portion of the exaction properly might have been made, or indeed that an equal amount legally might have been collected, had a different power been asserted as the basis. Thus this Court has held in a lengthy line of cases that a state tax may be enjoined in whole, and no part of it may be collected, if the imposition is based upon an assertion of a power to levy a tax on the privilege of engaging in interstate commerce. See, e.g., *McCarroll v. Dixie Greyhound Lines*, 309 U.S. 176 (1940); *Ingels v. Morf*, 300 U.S. 290 (1937); the cases tabulated in the appendix to Mr. Justice Frankfurter's dissenting opinion in *Capitol Greyhound Lines v. Brice*, 339 U.S. 542, at 561 (1950); and *Nippert v. Richmond*, 327 U.S. 416 (1946). The flat injunction against collection is not rendered erroneous by reason of the fact that the same amount properly might have been collected if a different basis for the exaction had been asserted.

In *Great Northern Ry. v. Washington*, 300 U.S. 154 (1937), the state was constitutionally entitled to collect the reasonable cost of supervision and regulation from railroads engaged in interstate commerce. In seeking to enjoin the collection of license fees ostensibly levied for this purpose, the complaining railroad showed that the funds collected had been commingled with funds from other sources, and that expenditures had been made from this commingled fund for purposes beyond the proper scope of the fees' justification. This Court first held (300 U.S. at 161-162) that the statute was not void on its face, as this Court held concerning Section 2, Eleventh, in *Hanson*, 351 U.S. 225 (1956). The opinion then turned to the different question of whether the act, valid on its face, was rendered unconsti-

tutional in fact by its application imposing fees for purposes beyond the constitutional limits. The Court held (300 U.S. at 161, 164) that in such a situation commingling and inadequate records made it impossible to determine whether the money being collected "is for a purpose other than the legitimate one." The burden is on those seeking to collect the charges; they must come forward with evidence to establish that the charges demanded and collected do not exceed the reasonable cost of the activity that supports the exaction, and that the charges will not be diverted to some other purpose. Upon failure of the defendant to discharge this burden of proof, the statute was declared unconstitutional, the exaction was enjoined completely, and the state forbidden to "part of it." 300 U.S. at 161. The Court concluded (300 U.S. at 168):

"As was said in the Foote Case [232 U.S. 103], 'a state is at liberty to intermingle duties involving costs properly chargeable to the railroads, with duties involving costs not so chargeable, but if it does so, when the exaction is challenged, it must assume the burden of showing that the sums exacted from the railroads do not exceed what is reasonably needed for the service rendered.'"

Here the "service rendered" is the service rendered by the appellant unions as statutory agents in the conduct of collective bargaining. Not only have they failed to show that the amounts collected are "reasonably necessary for this service; they have stipulated (R. 176, 191) that the funds collected "have been, are being, and will be used in substantial part for purposes other than the payment of wages, maintenance, and administration of agreements concerning rates of pay, rules and working conditions, wages, hours, terms and other conditions of employment, and the handling of disputes relating to the above."

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on the contrary, being used for political purposes which do not involve and are unnecessary to" the above activities.

It is unnecessary to extend this brief by including other examples of decrees enjoining the collection of any part of an exaction based on an assertion of power denied by the Constitution. Despite the Solicitor General's "difficulty in understanding" the principle, it is settled that the "proper expenditure of part of the general dues funds" does not "excuse appellees from paying any part of the fees, dues, and assessments called for by the agreement."

The Solicitor General concedes that delicate constitutional questions are raised by the appellants' political activities and expenditures, but seeks to avoid the necessity of deciding them by his argument that in any event the activities and expenditures are "impliedly prohibited" by Section Eleven²⁴. He thus supports the decision of the courts below that some activities are wrongful, although upon different grounds. The only question remaining relates to the form of relief. The injunctive portion of the decree, he asserts, is unnecessarily broad since it prevents collection instead of expenditures. The argument, even if it were sound, would not reach the damages²⁵ portion of the relief granted, however, and the Solicitor General apparently believes judgment below to be correct to this extent.²⁵ Thus,

²⁴ Three of the appellees, not protected by supersedeas bonds, were awarded restitution of the dues and fees they had paid under compulsion of the union shop agreement in the amounts of \$158.133.50, and \$151.50 each (R. 106).

²⁵ The Solicitor General complains of the lack of evidence on a finding concerning the feasibility of segregating the dues and fees of dissenters in the future (brief, pp. 14, 15 n. 6, 45), but does not question the specific finding of the trial court that "by the commingling of funds" the appellant unions "have made it impossible to segregate the amount of dues collected from plaintiffs" unions for political purposes in the past (R. 104).

Solicitor General's argument, if accepted, would result in at least partial affirmance of the judgment below.

B. The Supposed "Alternative" Remedy Would Be Either Illusory or Identical in Operation With the Decree Entered.

The Solicitor General has suggested that there may have been an alternative remedy available to the individual appellees for the enforcement and protection of their rights and that the decision below should be reversed or modified for their failure to pursue this supposed alternative remedy. Assuming that the supposed remedy is in fact a genuine alternative, there is no authority referred to in the brief, nor is there any, to compel the appellees to seek this alternative instead of the remedy they chose, or to alter the basic principle that a plaintiff is free to select for himself the various forms of relief afforded by the law. The Solicitor General concedes (brief, p. 47) that he has no decision to support such a denial of the individual appellees' right to choose, or to confine the discretion of the court below in fashioning the decree to meet the needs of the particular case.

The supposed alternative remedy offered by the Solicitor General is based on his avowed difficulty considering the expenditure of funds in understanding how wrongful expenditure of public funds collected can excuse the payment of any, and is based on the misconception that the decree entered was proper for this reason. So long as the appellants' right to their contribution is their assertion of the right to use any or all of the contributions for any political purpose whatever, the expenditure of course, is proper. Mistaking this principle, the Solicitor General argues that the remedy should have been a writ of injunction against the expenditures complained of.

²⁸ See, e.g., *The Fair v. Kohler Die & Specialty Co.*, 254 U.S. 7 (1913).

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ever, to prohibit the appellants from making any ex-
tures for political purposes would restrict unneces-
the privilege of willing members to join together *vol-*
untarily, through the union, to exercise their political
collectively. Such a decree would raise the objections
sidered by this Court in *United States v. C.I.O.*, 335
106 (1948), and *United States v. U.A.W.-C.I.O.*, 352
567 (1957). The Solicitor General apparently has fail-
appreciate that the trial court exercised scrupulous
to avoid any limitation of *voluntary* collective action
fashioned the decree accordingly.

It has been suggested, however, that perhaps the
court might have limited its injunction to a prohibi-
solely against the use for political purposes of the m-
contributed by the appellees and those who share
interest in preserving their constitutional liberties;
the union members might then be permitted to "contra-
or "contract out" by notifying the union of their ele-
to allow, or not to allow, use of their contribution
political purposes. Or perhaps, the Solicitor General
suggested, the decree could have provided for the seg-
tion of the contributions of the appellees and like-m-
employees into a special fund limited in use to colle-
bargaining. Or, continuing the exercise in imagination,
decree could have provided for a *pro rata* reduction of
appellees' dues, fees, and assessments, in the ratio of
appellants' expenditures for political purposes to tota-
penditures. But the marshaling of hypothetical possi-
ties is put aside by the Solicitor General with the obs-
tion (brief, p. 46): "Such questions need not be res-
at this time, however, for no relief of this kind was
requested by the appellees or granted by the courts be-

We agree that the questions are premature, but
fundamentally different grounds. The Solicitor Ge-
has ignored the fact that the decree entered below,

not foreclose any possible "remedies". As explained (pages 28-31), the court below employed the device used by this Court in *Brown v. Board of Education*, 349 U.S. 294 (1955), and left it to the appellate first instance to propose which of the various remedies will be adopted. Certainly it is the appellants themselves who should first have the opportunity to propose a plan which will disrupt least their structure and interests. Nothing in the principles controlling equitable relief requires the court to deny such an opportunity. A proposal has been submitted, approved by the court and embodied in a decree, it will be time enough to question the propriety of the particular form of relief granted on appeal by the appellant unions upon these grounds. It would be premature, since the question has not yet been decided in the orderly progress of the litigation. By the Solicitor General gains no greater right than he would have to inject questions into the case at this order.

Flexible equitable principles empowered the court to declare the underlying principles governing the grant of relief to the individual appellees pending the proceedings, and impose the burden upon the appellants coming forward with a proposal for a permanent form of control. Even if, for some reason, the Solicitor General were justified in ignoring what was in fact decided by the court below, and in misconceiving the decree as contemplated no further proceedings, the decree should be set aside in favor of the supposed alternative. The appellees back to the trial court after nearly a year of effort in the state and federal courts, with the result that they should start afresh with a new "prayer for relief" and expenditure of the receipts from appellees' funds for the disputed purposes" (brief, p. 46), would be at best and an effective denial of their rights.

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In *Clay v. Sun Insurance Office, Limited*, 363 U.S. 499 (1960), Mr. Justice Black said in the course of a dissenting opinion in which Chief Justice Warren and Mr. Justice Douglas joined (363 U.S. at 214, 224):

"I believe that there are times when a constitutional question is so important that it should be decided by the courts though judicial ingenuity would find a way to avoid it."

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"Litigants have a right to have their lawsuits heard without unreasonable and unnecessary delay and expense."

Mr. Justice Douglas, in a separate dissent, stated (363 U.S. at 228):

"Some litigants have long purses. Many, however, hardly afford one lawsuit, let alone two. Shutting out parties between state and federal tribunals is a way of defeating the ends of justice. The purpose of justice is not an academic exercise."

Those statements are applicable here.

B. *Mere tracing of the appellees' contributions would be futile.*

If the Solicitor General intended to suggest as a remedy a decree requiring the unions simply to segregate and account for funds originating with the appellees and like-minded members and to assure that these funds are not diverted through political channels, he is inviting this Court to require the unions to make vital protections of the Bill of Rights to the measure a level of juggling books of account. The appellants could always attribute a political expenditure to the contributions of others, and by a tidy bookkeeping enter any protest from unwilling members. Certainly it

be believed that a decree so limited would provide adequate alternative means to protect the individual appellees.

2. The suggested "alternative" would be the equivalent of the decree entered.

If, as we prefer to believe, the Solicitor General is to suggest that the decree should be framed in more than the resourceful allocation of a properly labeled account, and to afford redress, then the difference between the supposed remedy and the decree entered becomes clear in words. If the appellant unions are not to shift a disproportionate share of the costs of the remedy gaining to dissident members, and are in fact to the use of money *voluntarily* contributed in making *political* expenditures, then the decree below is without error. A general injunction against the use of compulsory dues, fees, and assessments for such purposes would require, if intended to be effective, that the appellant unions alter their conduct and operations. In the exercise of its constitutional function to supervise, enforce, or modify the decree the court would of necessity inquire into the details of the operations and appraise its good faith and its ability to preserve constitutional freedoms. This is the procedure contemplated by the decree now before the Court. To send the individual appellees back to state court to re-word the decree without changing its substance and operating effect would serve no purpose but delay. This Court does not sit as a supreme court to require that the state courts conform to prescribed linguistic artistry in the use of language. So long as the decree is correct in its practical operation and substance, it must be affirmed.

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C. To Compel the Individual Appellees to Bear the Burden of Supervising Future Expenditures Would Finally and Effectively Deny Their Constitutional Rights.

Viewed in another light, the hypothetical "alter-
remedy offered by the Solicitor General would dif-
nificantly from the decree already entered. It w
fact, be tantamount to an absolute denial of the ap-
rights under the First and Fifth Amendments.

If a decree were entered in the form of a general
tion restraining the appellant unions from making
expenditures from the contributions of the individ-
pellees and other dissenting employees, with no acco-
ing obligation upon the unions to submit a plan
pliance to the scrutiny of the court, the appellees
be stripped of any meaningful protection and w
left at the mercies of the unions as in the past
long years of costly litigation, these six railroad
would be told by the Court that they must keep a
less vigil over all the manifold branches and a
through which their moneys are transmitted and dis-
to follow the labyrinths of the unions' internal tr
and retransfers of funds, to police every expend
any guise, to act as a censor of publications and a
visor of the activities of every officer and lobbyist
unions themselves profess to be unable to trace th
funds through the multitudinous channels of int
transmission. How much less can the individual ap-
as rank outsiders, be expected to trace their dollars
the mazes of a hostile and gigantic complex of
internationals, super-committees and sub-committ
by happenstance, the individual appellees should
to anticipate future expenditures, they would be co-
to resort to the court in each instance to prevent

bursement, or to incur the expense and burdens of pursuing the remedies for contempt if they reached the courts too late.²⁷ The burden upon the Courts, as well as upon the individual members, would be overwhelming.

If, to protect his \$60 or \$100 per year, the individual worker must assume such burdens, then the courts have failed him. Insurmountable procedural obstacles are as effective in destroying rights as judicial declarations. See, *v.g.* *Marino v. Ragen*, 332 U.S. 561, at 564 (1947). (Mr. Justice Rutledge, concurring); *Davis v. Wechsler*, 263 U.S. 22 (1923). When the hallowed freedoms of belief and expression are at stake, the individual need bear no burden of proof beyond showing that his freedoms have been impaired. *Speiser v. Randall*, 357 U.S. 513 (1958).

D. The Supposed Legislative Remedies Are Unavailable or Inapposite.

In the course of an effort to find a ground for avoiding the responsibility of deciding the controversy, the Solicitor General has referred the Court to a proposed bill which Congress refused to enact (brief, p. 44), a law of Great Britain (brief, p. 46 n. 32), and an act of Congress passed five years after this action was commenced that has no application to these facts (brief, pp. 46 n. 33; 48-49).²⁸ He

²⁷ As the Solicitor General's brief (p. 47) states the point, "... in order to restrain a particular kind of activity or expenditure, the dissenting members would have to show that the particular kind of activity or expenditure infringed upon their rights."

²⁸ The statute is addressed not to the constitutional questions presented by a government-authorized union shop engaged in political activity, but to the fiduciary obligation of an officer of a purely voluntary association, for the prevention of embezzlement. The Solicitor General reports (brief, p. 49) that the legislative history establishes that the law would not have been intended to apply to this case even if it had been enacted in time to be relevant.

has not suggested that this varied legislative activity has any bearing on the appropriate remedy for the wrong suffered by the appellees. It is not for this Court to remedy legislative mistakes by enacting a statute Congress refused to adopt, or to add provisions which Congress rejected. The relevance of speculation about what Congress might have done but did not do in the way of affording remedies is indeed a mystery.

Perhaps the significance of this legislative material is revealed by the Solicitor General's concern (brief, p. 29) for the "intensity of the feelings aroused" concerning union political activity, and the consequent necessity for "judicial caution." If by this observation it is meant that the Court should avoid decision when the issue "arouses intense feelings," then the great historic declarations of constitutional principle that have marked the work of this Court from its early years to the present have all been improper.²⁹ It appears that "caution" has been mistaken for timidity, and that the age-old maxim that "a timid judge is a lawless judge" has been ignored.

The motivation of the Solicitor General is further revealed by the canvass of current legislative activity, and

and concludes the discussion by taking no position at all (brief, p. 49).

The reference (brief, pp. 47-48) to the "alternative remedy" suggested by the dissenting Justices in *United States v. C.I.O.*, 335 U.S. 106, 149 (1948), is misleading. The "alternative" there offered was an alternative to a *criminal prosecution* in voluntary unions where the member who does not wish to contribute does not jeopardize his job, and where the obvious "alternative remedy" is simply to quit the union.

²⁹ Mr. Justice Whittaker appropriately has remarked:

"Since the function of the Court is to resolve great issues, it is inevitable that it must proceed in the midst of tensions, and it always has." Address before Federal Bar Association, Chicago, Illinois, Sept. 17, 1960, 7 Federal Bar News 370, Dec. 1960.

the expressed hope that "further clarification" may result from future legislative action. (his brief, pp. 52-53). In plainer terms, the Court is advised to "pass the buck" by delaying decision until some other branch of government has solved the problem.

In the same vein is the expressed concern (his brief, pp. 30-31) over the fact that the rights of many citizens, numbering perhaps in the millions, may be affected by the principle at issue. But the Solicitor General appears to regard the possibility that the sacred constitutional rights of millions of Americans may be violated day by day as a reason for putting the question aside and evading decision rather than as an overwhelming demonstration of the very importance and immediacy of the issue calling for decision.

It may be that considerations of the intensity of public feelings and the magnitude of the question are appropriate factors to be considered by the officers of a political branch of government. They have no place in the work of a Court, entrusted with preserving constitutional rights against the clamor of the majority.

The same considerations of political expediency and preoccupation with legislative supremacy furnish a clue to the unusual reliance upon English precedents. A casual reader of the brief submitted by the Solicitor General and the responding brief of the appellants might be led to believe that the issues are governed by the laws of Great Britain. Both briefs delve deeply into the statutes, judicial decisions, and even the executive actions in that country which relate to the propriety of political activities of trade unions (Solicitor General's brief, pp. 29, 30, 33, 34, 40, 42, 32; appellants' responsive brief, pp. 8, 9, 10, 11, 12). In many areas of the law, English experience no doubt affords a useful subject of comparative study. But England, not governed by no written constitution, her legislative power

is supreme, and her courts have neither the power nor the duty to set aside acts of Parliament. It was the very purpose of our Bill of Rights to alter that situation, to break with the English tradition, and to subject the legislative authority to fixed limits enforceable through the judiciary.³⁰ When a constitutional right is at stake, British guidance is useless, and English decisions are inapposite.

It is significant, also, that the union shop "in Britain is not a subject of collective bargaining" and there is no legally-enforceable compulsory union membership there—diametrically opposite to the situation here. Lenhoff, *The Problem of Compulsory Unionism in Europe*, 5 Am.J. Comp. L. 18, 43 (1956); Ludwig Teller, *British v. American Labor Laws and Practices: A Study in Contrasts*, American Bar Association Section of Labor Relations Law, 1957, pp. 28-29; Rothschild, *Government Regulation of Trade Unions in Great Britain*, 38 Col. L. Rev. 1335, 1390 (1938); Mathews, *Labor Relations and the Law*, Little, Brown & Co., 1953, p. 496. Since government in England neither sponsors nor enforces the union shop, the situation is vastly different and, indeed, the fact that government in England deems necessary *any* regulation respecting political expenditures by unions serves to highlight the need for the relief granted by the lower court under the facts of this case.

The appellant unions, in their response, state (brief, pp. 8-9):

"The Government's brief suggests the possibility of 'contracting out' of a portion of the dues because of political activities, as is provided by statute in Great

³⁰ See the remarks of Mr. Justice Black in *The Bill of Rights*, 35 N.Y.U.L. Rev. 865 at 867-870 (1960), and Section I.D., *supra*, pp. 32-33.

Britain. Brief, pp. 29-30, 45-6. But any such relief for dissidents is obviously a legislative matter within the discretion of Congress; it is simply impossible to find any such affirmative requirements in the Constitution. Some of the Justices of this Court have recognized the possible desirability of such or similar legislation but never has it heretofore been suggested as a constitutional requirement. *United States v. U.A.W. C.I.O.*, 352 U.S. 567, 597-8; *United States v. C.I.O.* 335 U.S. 106, 149-50."

This is indeed a naive and cavalier way to approach this important point of constitutional law. The requirements of the First Amendment are negative and not positive. Government cannot deprive an individual of his fundamental rights of freedom of speech, religion, politics, association etc. The First Amendment does not require unions to "contract out" but does require them (in the exercise of their assumed regulatory powers) to refrain from interfering with the sacred rights guaranteed under that Amendment. It is sheer bravado for the unions to beat their breasts and say of the Solicitor General's suggestion to "contract out": "... it is simply impossible to find any such affirmative requirements in the Constitution."

It bears repetition that the unions in governmental roles are required to respect the freedoms guaranteed by the Bill of Rights, and, if they do, there is no occasion to talk about their alleged duty to "contract out" or "contract in". They are presumed to know how to deport themselves to meet the plain requirements of the First Amendment.

III.

The decision below properly declared Section 2, Eleventh, unconstitutional as applied to the appellees under the facts proved.

The brief filed by the Solicitor General repeatedly charges that the court below committed error because it held that Section 2, Eleventh, of the Railway Labor Act is unconstitutional. That argument, however, is directed solely to matters of form, and does not touch the substantive issues. Whether the statute is held to be unconstitutional on its face, in its application to these facts, or inapplicable to support the exactions because constitutional limitations are to be read into it, the decree entered is correct. Even if there were some merit in the Solicitor General's argument—and there is none—the situation would be that of a court reaching the right result for the wrong reason, and the decree should still be affirmed.

A. The State Courts Correctly Held the Statute Unconstitutional, Not on Its Face, But in Its Application Between These Parties.

A basic defect in the Solicitor General's argument is his failure to distinguish between a statute unconstitutional on its face and a statute unconstitutionally applied.³¹ If the statute *by its terms* infringes upon constitutional rights, it is void for all purposes, and may not be applied in *any*

³¹ Typical of the Solicitor General's failure to appreciate the distinction between unconstitutionality appearing *on the face* of the act and unconstitutionality *in application to particular facts* is the following statement from his brief (p. 20):

"Whether or not any or all of the disputed expenditures are improper, Section 2, Eleventh, is valid and constitutional. The union shop agreements are also valid on their face and in general, even though particular expenditures may be illegal."

case, no matter how clearly permissible the result may have been under a statute more narrowly drawn. A statute which is constitutional "on its face" will not necessarily be adjudicated to be constitutional in its application where it may be invoked as authority and applied to a concrete factual situation. The cases drawing this distinction are legion. See, e.g., *Lassiter v. Northampton Board of Elections*, 360 U.S. 45, at 53-54 (1959) and *City of Baxley*, 355 U.S. 313 (1958).

In the application of these principles to the question of the constitutionality of monetary exactions, the Court has held that a statute which on its face authorizes contributions for legitimate purposes will be unconstitutional if the moneys are in fact used for purposes which invade constitutional guarantees. Thus in *Northern Ry. v. Washington*, 300 U.S. 154 (1937) the principles applicable to the case at bar were declared (300 U.S. at 160-161):

"... A law exhibiting the intent to impose a compensatory fee for such a legitimate purpose is on its face reasonable. . . . Such a statute may, by reason of the presumption of validity, show on its face that part of the exaction is to be used for a purpose other than the legitimate one of supervision and control, and may, for that reason, be void. And a statute which upon its face may be shown to be void and unconstitutional on account of its actual operation. If the exaction be clearly excessive it is bad in toto and cannot collect any part of it" (footnotes omitted).

As stated previously in this brief (pp. 49-50), the Court went on to hold the statute in question valid on its face but unconstitutional in its application, since the moneys collected had been expended for improper purposes. On the other hand, a statute is attacked before it is applied and enforced, as in *Hanson*, perforce it can be

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on its face, and conjectural possibilities of misuse or cannot be considered. In *Bourjois, Inc. v. Chapman*, 301 U.S. 183 (1937), decided in the same term as *Great Northern Ry. v. Washington*, *supra*, and involving the same ground of tax, a newly enacted statute was attacked upon the ground that the amounts collected might, in the future, be used for purposes which would render the statute unconstitutional. Mr. Justice Brandeis stated for the Court (301 U.S. at 187-188):

"... The case was heard shortly after the statute became operative. It was obviously impossible to determine whether the fees would prove to be in excess of the administrative requirement, and in the situation it is sufficient if it is shown that the fees are not unreasonable on their face. ... The mere fact that the fees imposed might exceed the cost of collection is immaterial."²²

Within this framework, the *Hanson* case is the counterpart of *Bourjois, Inc. v. Chapman*, *supra*, while the instant case is the counterpart of *Great Northern Ry. v. Washington*. The *Hanson* case, 351 U.S. 225 (1956), raised the issue of the constitutionality of Section 2, Elevator Act, on its face, while the instant suit presents the question of constitutionality as applied as the instrument to political and ideological support.²³ In *Hanson*, this

²² The Court went on to point out protections afforded by the statute there but not provided here (301 U.S. at 188).

"The statute provides that the fees collected shall be used solely to the enforcement of this Act; and the Act regulates but one class of activity. The record shows that the State Treasurer has set up a separate account to which cosmetic fees are credited, and against which are to be debited only the expense of enforcement."

²³ It will be noted that the prayers in the petition (R. 106) and the language of the decree (R. 106) make it plain that the attack on the Act and contract is "to the extent that it is or is applied to permit" certain conduct.

held the section not to be unconstitutional and therefore not vulnerable to a prospective attack had been put into effect. But the decision served the question of the constitutionality of Eleventh, *as applied*, if its authority should cover for forcing ideological conformity on in contravention of the First Amendment," General recognized and quoted (brief, p. 37) recognizes in addition that the evidence poses questions "not presented by the record" (brief, p. 37). In an unexplained contradiction that brief repeats the assertion that the constitutionality on its face, and that the union statute made under it are "valid in general and in particular" (brief, pp. 35, 39). These assertions do not raise the issues raised by appellees. Not once does the Solicitor General's brief face the issue that is presented: the constitutionality of Section 2, Eleventh, as administered and enforced by the parties to this union should exact money from unwilling appellees for the ideological purposes shown by the concrete facts here.

He readily concedes, however, that the "delicate constitutional questions" (brief, p. 37) are clear that if any constitutional question is involved in the application of Section 2, Eleventh, that statute which authorizes the arrangement between appellants and the railroad under which the union is claimed to be required. The invasion of constitutional rights is sought to be justified as results from the application of, the Act of Congress. The Act is, *to that extent and as so applied*, unconstitutional. No more was decided by the court below. It is stated (R. 106):

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"... I find and declare Section Two (Eleventh
said Railway Labor Act to be unconstitutional
extent that it permits, or is applied to pe
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represent for the complained of purposes and
set forth above, . . ." (italics added).

The trial court thus observed the critical d
which the Solicitor General has ignored.

The same considerations dispose of the Soli
eral's repeated claim that the union shop a
"itself" is not invalid, and that the court below c
fatal error in so deciding. If Section 2, Eleventh,
stitutional as applied and asserted against the ap
this case, regardless of its general validity, then
tract which rests upon the authority of that sta
fall to the same degree. It cannot validly be a
the appellees, or to the members of the class th
sent, so long as the unconstitutional condition
These are precisely the limits of the holding be
trial judge stated (R. 106):

"... I hereby declare the union shop agree
to be null, void, and of no effect *as between th*
and that the *above-described enforcement* of s
shop agreements is illegal *in that it depriv*
tiffs, and the class they represent, of the al
tioned personal rights guaranteed by the Co
of the United States . . ." (italics added).

An additional ground for rejection of this claim
is furnished by the fact that under the specific
Section 2, Eleventh, the condition of continued em
that may be imposed by a union shop agreement
membership in the form of the payment of perio
fees, and assessments. The fundamental signific
union shop agreement, therefore, is the imposition
to become a member and pay money. It is accord

leading to speak of the union shop contract as a whole," as if the agreement had some existence as a document apart from the conditions it imposes. Since the exactions for political activity are improper, the court below correctly held that the shop agreement is "null, void, and of no effect as to the parties," and the parties plaintiff, the union and their fellow employees who assumed membership under compulsion and who object to the use of their money for partisan political and ideological purposes, are properly relieved of the primary obligation imposed by the union shop contract, that is, the duty to contribute.

It is likewise misleading to talk of the "majority" in "the form of bargaining" as if the shop agreements embody (Solicitor General's brief, p. 20). The "form of bargaining"—exclusive representation by the union—is not affected by the presence of a union shop; and the "majority" has the right to "bargain together" irrespective of the union shop. It is not whether the majority may force others to contribute to political and ideological activities which the

B. The Courts Below Properly Held That the Constitutionality of the Statute as Applied Depends on the Purposes for Which Exactions Were Made and the Color of Its Authority.

The Solicitor General says (brief, pp. 2-3) that "the constitutional issues" are raised by the questions involved in this case, that these issues "have constitutional importance" and that appellee has a "vested interest" (or "right"—see Solicitor General's brief, p. 2) which was "explicitly recognized by the Court in *United States v. U.S. at 235-238*" "not to have their money used to support candidates and causes which they abhor, and

contract "itself" or "as some meaningful exchange obligations which for political purposes are held that the union has no effect as between the appellees here and membership under of their contributions for purposes, were properly imposed upon them duty to pay money.

the "interests of the shop" which the union general's brief, p. 41) a union shop" (brief, exclusive representation presence or absence of the right "to associate shop. The question is ers to join them in with the others oppose.

at the Constitu- Depends Upon re Made Under

pp. 23-25) that "delivered by the expenditures as "are of great consequence appellees have an "interest's brief, p. 17) which court in *Hanson*, 351 money used to advance or, and to be free of

undue influence" (brief, p. 28). The Solicitor General attacks (brief, p. 31) the assumption "that if *any* expenditure is made from appellees' fees and dues for purposes which infringe constitutional rights, then the entire union shop agreement is illegal and Section 2, Eleventh, is unconstitutional" and he contends that some expenditures are unconstitutional while others are not (brief, p. 32). He then assumes (brief, pp. 35-40) that at least some of the disputed expenditures are unconstitutional. He contends that the applicable statutory provisions and the union shop contract itself are nevertheless valid—the theory that the statute does not authorize invalid expenditures; and the Solicitor General says (brief, p. 36) that the contract should not be enjoined even though a substantial part of the expenditures under it are unconstitutional.

In short, the Solicitor General seeks to separate the union shop contract from the statute which authorizes it and seeks to separate the expenditures under the statute from the contract which provides the enforced conditions enabling the expenditures. Courts uniformly have refused to sustain such an artificial separation, holding that they must look at the "total operation and effect" and not from their view to a keyhole, disjointed analysis of the related whole.

The Solicitor General himself evidently recognizes that he cannot separate the results of the union shop expenditures—from the contract itself and its origin, for he admits (brief, p. 41) that "appellees have been granted powers by the government and are therefore under corresponding obligations." Moreover, he necessarily concedes that the expenditures are an integral part of the statutory and contractual scheme when he says that appellees have the right to challenge them.

tutional grounds, though he argues that the challenge should be made in a different form. If, as the Solicitor General appears at times to suggest (brief, pp. 41-42), the unions were merely "private associations", unauthorized and unsupported by government, there could be no constitutional issue arising out of their expenditures. The Constitution protects individuals against action which is directly or indirectly that of *government*—not against mere private individuals or associations.

Thus, by proposing alternative methods whereby appellees conceivably could challenge the constitutionality of the expenditures and obtain determination of the "delicate constitutional issues", the Solicitor General necessarily admits that the Railway Labor Act and the union shop contract represent governmental action which in fact is (or at least, in the Solicitor General's view, probably is) impairing the constitutional rights of appellees to freedom of speech, association and political action. Such admission is unavoidable and is entirely accurate.³⁴

This means that it is the *government* which is requiring appellees to pay the money which appellants are using to

³⁴ As we have shown in our original brief (pp. 46-63), the union shop contract represents governmental action because (1) it depends on the supremacy of federal legislation for its existence, (2) it depends on federal law to bind minorities, (3) the labor representatives themselves are designated pursuant to federal action, (4) the labor representatives perform a governmental function and serve as an instrument of governmental policy, (5) the labor representatives exert governmental power in negotiation and bargaining, (6) governmental power was expressly exerted in negotiation of the union shop contract; and (7) the union shop contract depends on federal agencies for its enforcement. This Court itself said in the *Hanson* case (351 U.S. at 232) that:

"If private rights are being invaded, it is by force of an agreement made pursuant to federal law which expressly declares that state law is superseded. . . . In other words, the federal statute is the source of the power and authority by which any private rights are lost or sacrificed."

achieve objectives which appellees oppose. It is the *government* which says to the union, in effect, "You may use the funds forcibly extracted from appellees through governmental action for any purpose, without reference to any applicable statutory or contractual restriction." It is the *government* which has forced appellees to make payments to the unions without any protective standards to prevent the improper expenditures here complained of.

Since government is involved and since the unlawful expenditures result from governmental action extracting the funds from appellees, the end result—unlawful expenditures in violation of appellees' constitutional rights—cannot be separated from the statute and the contract which made such expenditures possible; and there is no possible merit in the Solicitor General's suggestion that the improper expenditures be isolated and declared unconstitutional while their legislative and contractual source is held constitutional.

To summarize, the Solicitor General first states that the expenditures for political purposes are authorized by Section 2, Eleventh, to a degree sufficient to render the expenditures unconstitutional, and then insists, illogically and inconsistently, that the expenditures are somehow not *authorized enough* to render the statute which is the source of authority for exacting the funds unconstitutional *to the extent that it is so applied*. Such gossamer distinctions have no place in constitutional precedent. To accept that argument would allow every delegate of governmental power to evade judicial scrutiny of the constitutionality of his acts by asserting—to compound the wrong—that he has exceeded the limits of the power conferred.³⁵ For reasons

³⁵ Whatever claim to contributions from the appellees the appellant unions may make, the claim is based upon power conferred by Section 2, Eleventh. Constitutional limitations are not evaded

that are plain enough, this Court consistently has held that a statute is rendered unconstitutional in its application by a wrongful use of moneys collected under its authority.

. Whether the statute is unconstitutional to the extent that moneys collected under its authority are diverted to expenditures for improper use, as this Court in other cases and the lower courts in this case have held, or whether it is the expenditures made from funds collected under authority of the statute that are unconstitutional, is a matter of no practical consequence. In either case, the necessary and appropriate relief would be the same.

The brief of appellant unions is realistic in recognizing that expenditures pursuant to the union shop contract cannot be separated from the statutory and contractual authorization therefor. Appellants boldly assert (responsive brief, pp. 2-4) that Congress contemplated precisely the expenditures here complained of, intended that they should be made and deliberately "refused to impose restrictions against such expenditures. This deliberate decision by Congress is reflected, say appellants, in refusals to impose restrictions both before and after the union shop amendment to the Railway Labor Act. Appellants agree with appellees that the constitutional issues are properly and adequately presented in this case and that the Court should either affirm or reverse the trial court's decree.

by an assertion that the action in question is a "[m]isuse of power possessed by virtue of . . . law and made possible only because the wrongdoer is clothed with the authority of . . . law." *United States v. Classic*, 313 U.S. 299, 326 (1941). See also *Baldwin v. Morgan*, 251 F.2d 780, 786 (5th Cir. 1958): "The difficulty . . . on this point stems, we think, from his mistaken notion, several ways implied, that an action of a person cannot be state action (under color of law) if it is contrary to or in excess of authority granted under state law, or if the state law were invalid."

²⁸ See the cases cited in sections II A and III A of this brief *supra*, pp. 48-52, 63-68.

In summary, it appears that either implicitly or explicitly both the Solicitor General and the appellant unions agree with individual appellees that *Congress* is responsible for the expenditures of which appellees complain; the Solicitor General agrees with appellees that some such expenditures are (or probably are) unconstitutional; the appellants agree with appellees that all such expenditures must stand or fall with the statute and the union shop contract; and, while the Solicitor General has sought to separate the expenditures from their statutory and contractual source, his own analysis of the problem belies the effort at separation.

C. Section 2, Eleventh, Is Unconstitutional to the Extent That It Confers an Unlimited Power to Force Exactions from Railroad Employees.

The Solicitor General contends that, even though expenditures under the union shop contract may impair the constitutional rights of appellees, the statutory basis for the contract should not be declared unconstitutional. He says (brief, p. 38) that "the Act does not purport to, and does not authorize or sanction, 'political' expenditures which would be in violation of appellees' constitutional rights, or which would be otherwise unlawful. . . . On this subject of 'political' expenditures, the statute itself stands as if it explicitly provided that the union may make only such 'political' expenditures as it may properly do under the Constitution and laws. It contains an implied prohibition against the use by the unions of dissenters' monies in any manner which would violate their constitutional or other rights."

The Solicitor General's contention that there is an implied prohibition against the use of appellees' dues and fees for political and ideological purposes is belied by the very terms of Section 2, Eleventh (45 U.S.C. §152, Eleventh, 64 Stat. 1238):

"Eleventh. *Notwithstanding any other provision of this chapter, or of any other statute or law of the United States, or Territory thereof, or of any State, or any carrier or carriers as defined in this Act, no labor organization or labor organizations duly organized and authorized to represent employees in accordance with the requirements of this Act shall be admitted—*

"(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class" (*italics added*).

Moreover, it is at once apparent that if all statutes, regardless of the letter, contain a prohibition by "implied prohibition" under this "bootstrap" line of reasoning, there will be little reason ever for this Court to review on constitutional grounds legislation enacted by Congress, particularly regulatory legislation of the type represented by Section 2, Eleventh. The language quoted above is the only possible indication that Congress intended that Section 2, Eleventh, be impeded by no "implied prohibition".

The obvious answer is that government may not disclaim responsibility for unlawful conduct which it authorizes and promotes when such conduct could not occur without governmental authority. The government cannot say that it authorizes the unions to collect money forcibly from workers on pain of discharge, but since we have limited the uses to which the money is to be put, we have no responsibility if the money is used to destroy constitutional rights." When government authorizes private (or semi-private) associations to act in pursuance of a governmental objective—here declared by this Court to be

bilizing force" designed to "help insure the right to work in and along the arteries of interstate commerce." (*Hanson* 351 U.S. at 235)—it has a duty to see that the action taken pursuant to its authority will comport with constitutional standards.

In *Schechter v. United States*, 295 U.S. 495 (1935), the Court rejected the suggestion that the Constitution would permit *any* delegation of legislative authority "to trade or industrial associations or groups so as to empower them to enact the laws they deem to be wise and beneficent for the rehabilitation and expansion of their trade or industries." As to unrestricted delegation even to the President the Court said of Section 3 of the National Industrial Recovery Act (295 U.S. at 541-542):

"... It supplies no standards for any trade, industry or activity. It does not undertake to prescribe rules of conduct to be applied to particular states of fact determined by appropriate administrative procedure. Instead of prescribing rules of conduct, it authorizes the making of codes to prescribe them. For that legislative undertaking, section 3 sets up no standards aside from the statement of the general aims of rehabilitation, correction and expansion described in section 1. In view of the scope of that broad declaration, and of the nature of the few restrictions that are imposed, the discretion of the President in approving or prescribing codes, and thus enacting laws for the government of trade and industry throughout the country, is virtually unfettered. We think that the code-making authority thus conferred is an unconstitutional delegation of legislative power."

Likewise, in *Speiser v. Randall*, 357 U.S. 513, 524 (1958) this Court held that when a state takes action which may deter or suppress speech, it "must provide procedure amply adequate to safeguard against invasion of speech which the Constitution protects."

Here, of course, no standards have been fixed for use of union shop monies, and, even if it be held that there is an implied requirement that constitutional rights not be impaired, it is obvious that the standards are so vague and indefinite as to be invalid under the ruling in the *Schechter* case and the *Speiser* case. Section 2, EOPB, authorizes unions under union shop contracts to require employees—willing and unwilling—to achieve the Congressional purpose of “stabilizing” labor relations. It prescribes certain standards and protections to prevent discrimination among the “taxpayers”. It provides no standards of protection with respect to the use of the monies contributed by governmental authority and compulsion, and, as the statutory language is concerned, the unions are authorized to use the money for any purpose. The Solicitor General says (brief, p. 39), that the legislative history “falls far short of revealing a congressional intention to authorize expenditures of any kind, much less to authorize expenditures which may impinge upon someone’s constitutional rights.” Thus apparently the Solicitor General concedes that the unions were left free to spend the money as they chose, subject only to the broad standards of constitutionality and case by case rulings by the courts, or to any separate general statutes Congress might enact.

The responsive brief of appellants boldly agrees that Congress imposed no restrictions or standards with respect to expenditures under the union shop contract. The philosophy of appellants is well summarized in the caption of the first division of their responsive brief (p. 2) as follows:

“I. Congress Contemplated That the Unions Would Make Such Expenditures and at Least Three-Quarters of the Members Has Refused to Restrict Them or to Give Disaffected Members Protection Against Them.”

We submit that Congress may not delegate to the union such sweeping power over the constitutional rights of employees thus forced to pay taxes or other tribute to the unions. Congress may not walk away from the consequences of the conduct it has authorized, and may not rely on an "implied" condition that the unions will act in compliance with the Constitution. What hope is there that the union would so act when, even at this late date, they say that they are *merely* "private" organizations which have no constitutional responsibility whatsoever?

An "implied" constitutional standard was not deemed adequate in the *Schechter* case, even where the President of the United States was the delegate of Congress.³⁷ "Implied" constitutional standards were not deemed adequate in the numerous cases decided by this Court where statutes or ordinances purporting to "license" or "regulate" free speech or press were struck down because they gave too sweeping power to the governmental regulatory agency—i.e., they established inadequate "standards" for conduct under the authority granted. See, e.g., *Lovell v. Griffin*, 30 U.S. 444 (1938); *Hague v. Committee for Industrial Organization*, 307 U.S. 496 (1939); *Schneider v. New Jersey*, 308 U.S. 147 (1939); *Hill v. Florida*, 325 U.S. 538 (1945); *Talley v. California*, 362 U.S. 60 (1960); *Shelton v. Tucker*, 21 U. S. Sup. Ct. Bulletin 245 (Nos. 14 and 83, December 12, 1960).

The fundamental principle applicable to this case is well stated by this Court in *Terry v. Adams*, 345 U.S. 461, 466 (1953), as follows:

³⁷ See *Carter v. Carter Coal Co.*, 298 U.S. 238, at 311 (1936):

"The power conferred upon the majority is, in effect, the power to regulate the affairs of an unwilling minority. This legislative delegation in its most obnoxious form; for it is not even delegation to an official or an official body, presumptively disinterested, but to private persons whose interests may be and often are adverse to the interests of others in the same business" (italics added).

"The facts and findings bñing th within the reasoning and holding of peals for the Fourth Circuit in its two about excluding Negroes from Dem in South Carolina. . . . South Carol every trace of statutory or constitu the Democratic primaries. It did this thereafter the Democratic Party or D of South Carolina would be free to con tory practices against Negroes as vot tion there was that the Democratic ' private groups; the contention here is Association is a mere private group Appeals in invalidating the South C answered these formalistic arguments no election machinery could be sustain or effect was to deny Negroes on acco an effective voice in the governmenta country, state, or community. In do relied on the principle announced in *Supra*, 321 U.S. at page 664, that t right to be free from racial discrimi ' * * * is not to be nullified by a state its electoral process in a form which organization to practice racial discr election.'

"The South Carolina cases are in commands of the Fifteenth Amendm passed pursuant to it."

From the above, it is apparent that the u ment to the Railway Labor Act is unconst of the failure of Congress to impose any r any standards which would prevent the conduct of the unions here complained of operation and effect" of the statute has of fundamental constitutional rights, and precautions to prevent such impairment.

this case squarely of the Court of Appeals. Two recent decisions on democratic primaries in North Carolina had repealed constitutional control of this in the hope that Democratic 'Clubs' would continue discrimination against voters. The contention was that the Jaybird Club was merely a group. The Court of North Carolina practices its rights by holding that it is not unconstitutional if its purpose is to account of their racial affairs of their doing so the Court in *Smith v. Allwright*. At the constitutional discrimination in voting state through casting which permits a private discrimination in the in accord with the amendment and the laws

the union shop amendment is unconstitutional because of any restrictions or set of the unconstitutional of. The "practical" has been impairment and Congress took no

Even if one could conclude that the statute is unconstitutional because of the "implied" restrictions on the Solicitor General, it would still be necessary to conclude that the union shop contract is invalid because of nothing which would give effect to such restrictions. The practical operation and effect is to deprive a union of their constitutional rights. Paraphrasing this conclusion in the *Terry* case, "the constitutional right is not nullified . . . through casting" the compulsory contribution of funds and the unrestricted expenditure thereof in a form which permits a private organization to interfere with the First Amendment freedoms of employees to resist government action to join and contribute to such organization.

In *Collins v. New Hampshire*, 171 U.S. 30, 33, this Court stated:

"The direct and necessary result of a statute taken into consideration when deciding its constitutionality, even if that result is not in so many words either enacted or distinctly provided for. *In language a statute may be framed, its purpose may be determined by its natural and reasonable construction.*" (italics added).

In Section 2, Eleventh, of the Railway Labor Act, Congress expressly approved the collection of regular initiation fees, dues, and assessments from employees represented by a union as a condition of employment. Congress itself made no effort to place any limits whatsoever on the use of the unions thus favored might put the money collected in regular dues and fees. Nor, in fact, did it place any limit on the amounts which the unions might exact in regular dues and fees as a condition of continued employment. The net is that Congress, having given

a blanket authority, is responsible for the unions put that authority.

D. Section 2, Eleventh, Is Unconstitutional to That It Requires Unwilling Membership in or Semi-Political Organizations.

The Court did not hold in the *Hanson* case could constitutionally authorize compulsion in a private association, certainly not compulsion in a political organization, as a condition of employment.⁸⁸

In the instant case, on the other hand, the record shows that employees are compelled to belong to such a political organization. If Congress constitutionally sanction such an arrangement, there is to be no reason why it could not authorize compulsion of continued employment, compulsory membership in political organizations such as, for instance, the National Labor Relations Board.

When the Court decided in *Hanson*, on the record there before it, that nothing in the Constitution of the United States prohibited Congress from authorizing unions to contract with employers, employees must pay their fair share of the cost of the collective bargaining agent representing them.

⁸⁸ The following colloquy occurred in the oral argument in this Court (Transcript, pp. 59-60):

"Mr. Justice Black: Let me give you an example. Suppose you contract to do this, and he is a member, he had to be a participant, even though he was supporting a political party with which he did not wish to be associated. Does this relieve him from being compelled to support such an association as that? If you don't want to answer it does or not, is that question raised here?"

"Mr. Schoene: I think it is definitely answered by Mr. Justice Black. . . ."

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class, it went to the very limit of what the Bi
permits. To go further and to authorize not on
pulsory payment towards collective bargaining
but also compulsory membership in a private a
and especially in a private association that is als
organization—would violate the fundamental co
rights of the individual. It would violate the
association—the right to join or not to join
organization. *Watkins v. United States*, 354 U.
(1957); *N.A.A.C.P. v. Alabama*, 357 U.S. 449;
Labor Board v. Jones & Laughlin Steel Corp.,
33, 34 (1937); *Amalgamated Workers v. Edis*,
U.S. 261, 263 (1940); *International Union v.*
Employment Rel. Board, 336 U.S. 245, 259 (19
v. Stacey, 151 Me. 36, 116 A. 2d 497, 500 (195

The right to join and its corollary the right
Pappas v. Stacey, supra, are not only a part o
of individuals under American constitutional
but are also expressly recognized in the *Univ*
ration of Human Rights. Thus, Article XX of
ration reads as follows:

"1. Everyone has the right to freedom
assembly and association.

"2. No one may be compelled to belong
ciation."

To compel membership in a private associati
dition of continued employment also would un
the right to work in the ordinary occupations
Wo v. Hopkins, 118 U.S. 356 (1886); *Truax v*
U.S. 33 (1915); *Smith v. Texas*, 233 U.S.
Takahashi v. Fish and Game Commission, 3
(1948); *Wieman v. Updegraff*, 344 U.S. 183.
chower v. Board of Education, 350 U.S. 551

sending opinion of Mr. Justice Douglas in *of Regents*, 347 U.S. 442, 472 (1956).

Clearly, Congress does not have unlin impose conditions on the free exercise of on the theory that it knows best what welfare of the individual. Under the individual has the privilege of making t himself. Just as Mr. Justice Holmes represent in *Adair v. United States*, 208 U.S. 1 that "the question what and how much do, is one on which intelligent people m appellees are entitled to question whether ideological activities of appellants are be run. Indeed, appellees' right to doubt m part of their constitutional liberties. fact—doubts in this area are expressed economists. Wright, *The Impact of the* Brace, & Co., 1951); Bradley, *The Publ Power* (Univ. of Va. Press, 1959).

In addition to invasion of freedom o the right to work, imposition of a condition such as membership in a political or part ization violates the fundamental politic to the individual by the First, Fifth, a ments to the Constitution of the United

s in *Barsky v. Board*

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IV.

The Solicitor General's analysis of *Lathrop v.* supports the lower court's decree in this case

The Solicitor General, by a footnote reference 43 of his brief, calls attention to *Lathrop v. Do* 200, scheduled to be argued immediately following the argument of the instant case, and points out that the Court of Wisconsin there made it plain that the state supervise the expenditures of the integrated business state and thereby protect against abuses.

That is but one of several factors which clearly distinguish the *Lathrop* case from the instant one. There is no one to police appellants' expenditures of money collected as dues and fees. Indeed, as previously pointed out, Congress placed no limits either in amount or in use on the money appellants collect under union contracts and payments approved in Section 2, Eleventh, of the National Labor Act. Unless protected by this Court, appellants are in every sense of the word, at the mercy of the state and its appellants³⁹ in the use of their dues and fees for the condition of continued employment.

For a more complete analysis of the integrated business case see our original brief, pages 82-85.

³⁹ Appellants are, as we have noted previously, . . .

CONCLUSION

Like John Lilburne of old, the six working men and women now before this Court as appellees stand for the integrity of individual belief and opinion. The issue tendered is simply whether in this Nation a man shall be free to choose for himself what political programs and candidates he will support or oppose.

Against these appellees stand the appellant unions claiming the guardianship of the working man, not only as to the conditions of his work but also in respect to all his interests as a citizen;—not only as to what his pay shall be, but also as to what he shall believe and say. Zealous for the advancement of their organizations, appellant unions have forgotten that they were conceived to exalt the individual and not debase him. They have assumed the prerogative of making decisions for all their members not only in collective bargaining, but also in the broad fields of politics, government, education, health and national defense. But this Court will not forget that the gravest dangers to human freedom have come from dedicated men, convinced of their cause and blinded to the beliefs of those who choose not to join and follow. This Court can render no greater service to trade unionism than to retrieve it from self destruction by directing it on its lawful course and proclaiming again its essential objective: to guarantee the dignity of human labor through the power of equal bargaining.

To uphold the rights of these six laborers requires no sacrifice of the rights of others. Under the decree, each individual will be free to support his own beliefs with his own voice and his own money, and like-minded people may

join together if they choose. In bargaining with the common employer, the unions will continue, as in the past, to represent the collective interests of all employees. To collect a fair share of the costs of this representation from workmen who hold opposing political views, the unions need only assure that the contribution demanded is confined to its lawful purpose. If they would collect from "free riders", the unions cannot force them into membership and then charge them for a *political* "ride" as well.

The Solicitor General has presented a brief which temporizes with vital rights at stake and leaves unheeded the truth that "constitutional rights are denied as well by the refusal of the . . . court to decide the question, as by erroneous decision of it." ⁴⁰ He nonetheless has shown a commendable awareness of the importance of the constitutional question which is squarely presented for decision. In his November 3, 1960 application for additional time to submit a brief, he stated to this Court:

"This case involves questions of constitutional law of broad application. Both the Department of Labor and the Department of Commerce, as well as other agencies of the Government, are concerned with the questions involved. Receipt of the views of, and consultations with, these other agencies have been required, and further consultations and exchanges of views will be necessary, as well as additional time for the preparation and printing (through the Government Printing Office) of the brief."

In the Solicitor General's further application (granted on November 7) he stated:

⁴⁰ Mr. Justice Stone, in *Lawrence v. State Tax Commission*, 286 U.S. 253, at 282 (1932). His opinion continues (286 U.S. at 282):

"But the Constitution, which guarantees rights and immunities to the citizen, likewise insures to him the privilege of having those rights and immunities judicially declared and protected when such judicial action is properly invoked."

"The issues involved in this proceeding have been the subject of meetings and consultation among various agencies of the Federal Government, and various views have been expressed as to the position which the United States should take as intervenor . . . Not only has it been and will it be necessary for several high officials of the Government to be consulted, but it has been and will be necessary to weigh the legal validity of the positions expressed in order to obtain a final position on behalf of the United States to be presented to this Court. We will not be able to obtain such a final position by Wednesday, November 9."

The appellant unions, in their responsive brief (p. 14) have chided the Solicitor General for irresolution and indecision:

"The due date of the brief then became November 9, the day after election day. The Department apparently found this time inadequate, and shortly before its expiration applied for an extension of time to November 25, stating that to prepare its brief consultation with certain high officials of the Government was required. Seemingly the time since the preceding June had been inadequate for that purpose."

We cannot join in the chiding; we can only regret that the Solicitor General, in the determination of basic constitutional issues, has preferred the advice of high officials of the Executive branch, rather than the teachings of Marshall, Holmes, Brandeis, Cardozo, Hughes and the other now departed and still living whose exertions in this citadel will be remembered in the history of Freedom. With hard earned wisdom, the Constitution establishes as its first and indispensable principle that this Court, and not the political branches, shall be entrusted with the ultimate and awesome responsibility for protecting the liberty of the individual and that above every act of government there broods the higher law of the Constitution, majestic and supreme.

As appellees' counsel freely conceded upon the first oral argument here, the concern of these six laborers is not primarily with the details of the relief to be granted. When individual belief and expression are the issue, the firm declaration of their sanctity means more than the particulars of the decree. It is not alone the money involved that has led these appellees to shoulder the burdens of this lawsuit for nearly eight years. Like Lilburne, they are aware that freedom can be whittled away almost imperceptibly, and that there can be no compromise with those who would imprison the minds and spirits of others. Despotism does not declare itself as such. The greatest tyranny has the smallest beginnings and, once power is conceded, liberty is lost. The indispensable condition of a free society—the right of each man to seek and support the truth as it is given him to find it—must be resolutely defended against every encroachment.

The decision below should be affirmed.

Respectfully submitted,

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Of Counsel

December 29, 1960

IN THE
Supreme Court of the United States

OCTOBER TERM, 1960

INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL.
Appellants,

v.

S. B. STREET, ET AL., *Appellees.*

On Appeal From the Supreme Court of Georgia

**REPLY TO BRIEF OF
CERTAIN APPELLEES UPON REARGUMENT**

MILTON KRAMER
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1960

No. 4

INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL.,
Appellants,

v.

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On Appeal From the Supreme Court of Georgia

**REPLY TO BRIEF OF
CERTAIN APPELLEES UPON REARGUMENT**

ARGUMENT

With the exception of one page, the individual Appellees' Brief Upon Reargument, all 87 pages of it, in addition to its other infirmities which we believe are apparent, assumes that it has been established that the expenditures by the appellants here under attack infringe the First Amendment rights of the individual appellees. A glance at the captions listed in the table

of contents reveals this sufficiently. . . Perhaps is predicated on the remark concocting a "composite" of distortions of the Solicitor General's brief and distortions of our response to it. Point III For example, they say it is our position intended to authorize the expenditures of." P. 16. What we did say was that we were aware of them and refused to prohibit them. It is a cry from a contention that Congress authorized the unions need no conferral of authority on their membership, to make any expenditures otherwise prohibited. But even if the "composite" is not of distortions, it is difficult to perceive the arguments of the Solicitor General and the arguments made by the appellants establish any principle.

As is pointed out in the brief amicus filed by the AFL-CIO, American labor unions have engaged in these activities since colonial days and have had union shops or closed shops for at least a century and a half. Congress did not create union security bargaining, or union-security arrangements. The National Labor Act did not create the railroad union collective bargaining in the railroad industry; it simply recognized what had long existed and imposed certain obligations on the parties. As this Court recognized in *Collier v. East*, *Peet Co. v. N.L.R.B.*, 338 U.S. 335, 362

"One of the oldest techniques in the history of collective bargaining is the closed shop."

The sole exception to the predication of the Brief on Reargument on the assumption

This assumption
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cation of appellees'
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been established that the expenditures h
 infringe their First Amendment rights
 I, F. p. 43. There they argue that in
 Eleventh of the Railway Labor Act is in
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 for its decree. There are at least two basi
 this argument: (1) it has not been esta
 these expenditures are illegal, and (2) i
 established, the decree would be an entir
 one, an injunction against the expenditure
 judgment, not a decree declaring the statu
 tutional and enjoining the entire operation
 shop.

If it were established that these exper
 late appellees' First Amendment rights
 agree with the Solicitor General that th
 appellees have mistaken their remedy and
 case, on this record, it cannot and should
 terminated what relief plaintiffs are entitle

A great variety of expenditures and a
 involved, as the Solicitor General says. S
 not be supposed that every individual
 every member of the purported class th
 is opposed to every non-bargaining activ
 appellant union and the organizations wit
 are affiliated; surely it cannot be suppose
 one of them opposes every legislative matt
 by appellants and is in favor of every leg
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posed to every candidate for office su
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 local lodge meeting or something in b

There is nothing in the record, nor is
 in fact, to indicate that any plaintiff ha
 to any appellant that it disagrees wi
 of any activity of any appellant, excep
 ing of this law suit. The stipulation
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 that the expenditure may be enjoined,
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 financial requirement, but that the enf
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 Section 2, Eleventh is unconstitutional
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This Reply would become intermi
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 believe they are fairly obvious both on
 their reliance on authority. We paus
 brief comments on some of them.

supported by any financial contribution by an officer at a meeting between.

Is there anything that has ever indicated that the union is with the objective of the bringing on (R. 176) shows that one of them, but they are of such disagreement as to suggest (Brief, p. 46), that they challenge any contribution to by the expender know that in this case the situation is back, the union organization with which it contributed to which he disapproves, that if Georgia hold not that the income portion of the enforcement of the be enjoined because unconstitutional because the

terminable if it addresses the numerous points of individual appellees. We have on analysis and in pause for but a few

Their analogy of the relief granted in *Board of Education*, 347 U.S. 483, 349 U.S. 519, is explicable on any rational basis. Appellate courts treat the injunction below as though it provided a kind of continuing supervision and procedure for complying with a mandatory injunction. Discussing this further, let us look again at the proceedings "contemplated" by the trial court. The alleged retention of jurisdiction to consider detailed proposals for "compliance" with the "Findings, Conclusions, Order, Judgment, and Decree" of the trial court (R. 101-7), affirmed by the Supreme Court of Georgia, totally forbade the operation of the union shop agreement. The violation appears on R. 106, near the top of the page, "provided, however, that said defendants petition the court to dissolve said injunction upon a showing that they no longer are engaging in proper and unlawful activities described as

If the decree in this case ordered the unions to terminate certain activities with a certain speed, or if the decree in the *Brown* case ordered the operation of public schools with a reservation of the school board might petition for dissolution of the injunction upon a showing that it no longer was in unconstitutional discrimination, then the relief in that case would have some bearing on this case. But neither the decree in the *Brown* case nor this case bears any remote resemblance to the decrees posited above. Thus all the cases cited by the appellees, where further proceedings in the trial court were prerequisite to any infringement on the conduct of any one, are utterly inapplicable. The individual appellees say, as they do

30, 31) that the courts below declared "the basic constitutional rights" and imposed "upon the appellant unions the responsibility, in the first instance, of devising and presenting a plan of operation that will implement and protect those rights", they are indulging in pure fantasy, and are describing not the decree that was entered but provisions they wish they had included in the order they prepared and the trial court signed without change and without giving appellants a fair opportunity to express their objection. R. 227-8.

The appellees say that any of the other remedies suggested by the Solicitor General as possibly appropriate should be considered "only after the present unlawful [sic] expenditures are enjoined." Brief, p. 15. But they have not asked in any court, here or below, that such expenditures be enjoined, nor has any court enjoined them, nor indeed is there any serious contention that they are unlawful; the crux of appellees' case, at least as heretofore presented, is not that they are unlawful but that because they are made Section 2, Eleventh of the Railroad Labor Act is unconstitutional and the union shop agreements invalid.

The purported distinction between this case and the integrated bar is astonishing. Appellees say that an integrated bar is to be distinguished from a union shop because "the integrated bar is a governmental organization whereas the appellant unions are essentially private associations chosen to serve in a governmental regulatory program." It is almost incredible that any lawyer might suggest that the First Amendment is to be applied with less rigor to a "governmental organization" than to an "essentially private" organization.

As is shown in our briefs and in the brief for the United States, the decree below cannot be sustained on any theory, nor may any injunction be entered or other relief granted upon this record. As we have heretofore shown, the judgment should be reversed and the case remanded with instructions to dismiss the complaint.

Respectfully submitted,

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January 6, 1961

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1960

No. 4

INTERNATIONAL ASSOCIATION
OF MACHINISTS, ET AL.,

Appellants,

v.

S. B. STREET, ET AL.,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF GEORGIA

**MOTION FOR LEAVE TO FILE A BRIEF AS
AMICUS CURIAE**

and

**BRIEF FOR KENNETH L. HOSTETLER, ET AL., AP-
PELLANTS IN THE PENDING CASE OF HOSTETLER
v. BROTHERHOOD OF RAILROAD TRAINMEN, NO.
8185, NOW PENDING IN THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT**

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Hostetler, et al.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1960

No. 4

**INTERNATIONAL ASSOCIATION
OF MACHINISTS, ET AL.,**

v.

S. B. STREET, ET AL.,

ON APPEAL FROM THE SUPREME COURT OF CALIFORNIA

**MOTION FOR LEAVE TO FILE A BRIEF
AMICUS CURIAE**

Kenneth L. Hostetler, et al., constituting all of the Appellants in the case of *Hostetler, et al. v. Brotherhood of Railroad Trainmen*, No. 8185, now pending in the United States Court of Appeals for the Fourth Circuit, respectfully move for leave to file a brief as *amicus curiae* in this case in support of the individual appellants.

Various briefs in the capacity of *amicus curiae* on behalf of the union appellants in this case have been filed with the Order of Court and after consent of the opposing party had been requested and refused. Upon recent e

of all of the briefs filed, including the Brief of the appellants, filed January 5, 1960. Movants have concluded that they not only have no interest in the outcome of this case but also have no considerations which they deem to be necessary to be presented to the Court in any of the briefs heretofore filed. Accordingly, they respectfully request the Court to permit the filing of this brief notwithstanding the imminence of the hearing on reargument and the subsequent impossibility of endeavoring to present the views of the opposing parties, and point out that this brief was filed within five days after they obtained the briefs heretofore filed.

As will appear from the opinion of the Court in *Hostetler v. Brotherhood of Railroad Trainmen*, 381 U.S. 281, the pending case in the Fourth Circuit involves the effect of political contributions made by a union, made out of dues funds, on the union shop agreement. That case was argued before the Court of Appeals on November 8, 1960, and was not yet decided. Hence, the decision in this case is decisive of the issue now before the Court of Appeals.

Your Movants are advised and believe that this case contains clear evidence that the contributions and many of the political expenditures to have been made by the union appellants constituted violations of the Federal Corrupt Practices Act; and that this Court should consider whether the application of that Act would justify the decree of the Georgia court which is questioned herein. The individual appellants have refrained from raising this question but it is inherent in the case and your Movants suggest that if the decision is against them, they will raise the question.

Brief Upon Reargu-
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tained on any obvious ground whether raised by the
or not, it would be the duty of this Court not to reverse
decree.

This point is not covered in any of the briefs;
further suggested that the briefs heretofore filed
present squarely the basic and decisive issues, as
shown in the Movants' Brief attached hereto.

Wherefore, the Movants Kenneth L. Hostetler
move the Court for leave to file the brief annexed
on the merits of the questions raised by the appeal.

Respectfully submitted,

HERBERT M. BRUNE,
10 Light Street
Baltimore 2, Maryland
Attorney for Kenneth L.
Hostetler, et al.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1960

No. 4

INTERNATIONAL ASSOCIATION
OF MACHINISTS, ET AL.

v.

S. B. STREET, ET AL.,

ON APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

BRIEF OF KENNETH L. HOSTETLER
AS AMICUS CURIAE

PRELIMINARY

The briefs heretofore filed in this case squarely what are here conceived to be the decisive issues.

1. *The Brief of the Solicitor General* because the statute and the agreement bear on their face, valid, there can be no contention to the exaction of dues from the plain discharge from employment if they fail to

It thereby ignores the fact that the statute is being applied to compel the payment of money by plaintiffs, to be applied to political purposes of which they disapprove. It is this compulsion, and the sanction of discharge under governmental power, of which the plaintiffs are entitled to complain. The Solicitor General has misconceived the nature of the plaintiffs' injury when he confines it to the misapplication of dues funds after they have been collected.

2. *The Brief of the Individual Appellees (Plaintiffs)* leans far toward attacking the statute itself. Thus, they assume a substantially greater burden than is necessary, since it is not the statute itself but rather the application of the statute made by defendants to compel illegal exactions in this case, which constitutes the real injury and invasion of the plaintiffs' constitutional rights. (This distinction appears to be recognized by the Individual Appellees in their Reply Brief at pp. 63 ff.).

3. *The Brief of the Union Appellants* relies heavily upon the supposed intention of Congress, in enacting the statute, to permit the exaction of dues to be devoted to political purposes. Even assuming this construction to be correct, despite the contrary view of the Solicitor General, the unions do not attempt to meet the Appellees' constitutional objections to the statute as so interpreted and applied, except by citing the *Hanson* case, which, by the terms of the majority and concurring opinions therein, did not answer the question.

Neither the pleadings nor the briefs consider the effect of the Federal Corrupt Practices Act. Since this point has not been considered below, ordinarily it would not be considered on appeal. However, if the decree of the Georgia Court is clearly sustainable on any grounds apparent on

the face of the Record, it would seem the duty of this Court to uphold the decree, whether or not such grounds have been seasonably presented and argued. This Court cannot be denied the power, *sua sponte*, to apply any statute which it finds in the record, or of which it takes judicial notice, if the application of such statute to the record will fully justify and sustain the lower court's decree. Cf. *Municipal Investors Assn. v. City of Birmingham* (1942) 316 U.S. 153, 62 S. Ct. 975.

The considerations suggested above as the basic issues will be presented briefly under the following subject headings:

I. The injury of which the plaintiffs properly complain is their threatened discharge, under the compulsion of federal law, for failure to pay dues illegally demanded by the union appellants;

II. The union dues were illegally demanded, and the union shop contract is therefore, on the present record, unenforceable:

A. Because the admitted use of a "substantial" part of such dues for political objects opposed by plaintiffs renders the compulsive payment of the dues a violation of their constitutional rights;

B. Because, if the statute is read as intended to be subject to constitutional limitations, the compulsive payment of the dues under sanction of discharge would constitute a violation of the statute itself;

C. Because the connection between the dues collected and the political contributions and expenditures admittedly to be made therefrom is such that the union shop contract is being made to serve as an essential link in the chain of acquiring and channeling funds in large amounts to illegal purposes in violation of the Corrupt Practices Act.

ARGUMENT

I.

THE INJURY OF WHICH THE PLAINTIFFS PROPERLY COMPLAIN IS THEIR THREATENED DISCHARGE, UNDER THE COM-PULSION OF FEDERAL LAW, FOR THE FAILURE TO PAY DUES ILLEGALLY DEMANDED BY THE UNION APPELLANTS.

In any inquiry such as the present, it is essential to define precisely the injury inflicted or threatened which represents an invasion of the plaintiff's constitutional rights.

The Solicitor General takes the position that the injury in this case is the diversion of dues funds, after they have been collected by the unions, to purposes not germane to collective bargaining, or otherwise objectionable. The short and conclusive answer to this is that, once the dues are paid, title to the fund is in the organization, not the individual. Thereafter, a diversion to improper purposes is an injury to the organization rather than to the individual contributor; and insofar as the contributor may be heard to complain, he is asserting a *derivative right* on behalf of the organization rather than a right of his own. This is particularly clear in the familiar instance of a stockholder's suit to enjoin or redress the diversion of corporate funds, so familiar that no authority need be cited therefor.

The injury to the employee must therefore be found otherwise than in the improper diversion of dues after they are collected. The injury lies in the direct impact of the union shop agreement, backed by the statute, on the individual employee, either through his compulsive payment of dues, or his loss of employment due to non-payment of dues, for these are the only alternatives offered him.

If the employee is being compelled to pay dues, a "substantial" part of which, as shown by this record, is to be devoted to political purposes contrary to his own political

views, it is the improper exaction of the money which constitutes the injury to him, not its subsequent diversion after he no longer holds legal or equitable title thereto.

Moreover, if he refuses to pay the dues, and is consequently threatened with discharge, it is the discharge or imminent threat of discharge which constitutes his injury.

II.

THE UNION DUES WERE ILLEGALLY DEMANDED, AND THE UNION SHOP AGREEMENT IS THEREFORE, ON THE PRESENT RECORD, UNENFORCEABLE.

There are several independent legal reasons why the attempted exaction of dues from the plaintiffs, on penalty of their discharge, is improper and illegal. Since part of the dues (a "substantial" part) will admittedly be devoted to political purposes in conflict with the political views of the plaintiffs, to compel payment by them, on penalty of forfeiture of employment, is, as shown in the briefs of the individual appellees, a violation of their constitutional rights, especially their rights under the First Amendment. If the statute authorizes such compulsion, the statute is, to that extent, or its application in these circumstances is, unconstitutional. *Secondly*, if the statute is construed as limited to the area in which it may operate without constitutional conflict, then the compulsion of dues is not permitted by the statute and is illegal as in violation of the Railway Labor Act read as a whole. *Thirdly*, and we conceive this to have become highly important as the case has developed, the Record shows that many of the admitted political activities and contributions financed out of dues funds, and which will continue to be financed out of dues funds, fall directly within the ban of the Corrupt Practices Act, as construed by this Court.

A. and B. The first two of these independent grounds determining that the dues are exacted, in substantial part, for illegal purposes, are covered in the Briefs of the individual appellees.

The third ground we will discuss briefly.

C. *The connection between the dues collected and the political contributions and expenditures admittedly made therefrom is such that the union shop contract being made to serve as an essential link in the chain by which the unions acquire and channel funds in substantial amounts to illegal purposes in violation of the Corrupt Practices Act.*

1. Dues funds are devoted in substantial part to contributions to political campaign funds. Such dues funds are in part first transferred to the Railway Labor Executive Association; thence to the "educational fund" of the Railway Labor's Political League, and thence to the "free fund" of the League. From the free fund they are directly contributed to campaign chests. A more clearly established and admitted violation of the Corrupt Practices Act can be difficult to envision. Moreover, general dues funds are also used to finance propaganda, pamphlets, newspapers, magazines and other means designed to influence the minds of the general public. This, too, is a direct violation of the Corrupt Practices Act. *United States v. United Automobile Workers*, (1957) 352 U.S. 567, 77 S. Ct. 529; U.S. Code, title 18, sec. 610.

2. The union shop agreements, as shown in this case, are a vital part of the process of obtaining and spending these political funds. They furnish the appropriate sinews which sustain the illegal political activity. Therefore, the upholding and enforcement of the union shop agreements in this case, with full knowledge of the facts and full acknowledgment by the unions, that the

so derived will be used in substantial part for purposes which the Court knows to be in violation of the Corrupt Practices Act, would seemingly harness the supreme judicial power of the United States to aiding and facilitating such violations of law. A contract so administered as to facilitate and directly aid a violation of the criminal law founded on a strong public policy is itself so infected with illegality as to require that it be not enforced at the behest of a guilty party. Cf. *Forsythe v. Woods*, (1871) 11 Wall. 484, 14 L. Ed. 207.

CONCLUSION

For the three independent reasons stated, the decree below, having the effect of enjoining the collection of dues from the plaintiffs and their discharge for failure to pay, was correct in all substantial respects and should be sustained. Moreover, if this Court is disposed to give heed to the Solicitor General's recommendation that the "delicate" constitutional questions presented in this case should be avoided, because of "intense feelings" or otherwise, the decree below can and should be affirmed as a necessary means of preserving the integrity of the Federal Corrupt Practices Act, and without reaching the constitutional questions which would otherwise require decision.

Respectfully submitted,

HERBERT M. BRUNE,
10 Light Street
Baltimore 2, Maryland

Attorney for Kenneth L.
Hostetler, et al.

APPELLANTS' OPPOSITION
TO MOTION FOR LEAVE
TO FILE BRIEF AMICUS
CURIAE (HOSTETLER)

IN THE
Supreme Court of the United States

OCTOBER TERM, 1960

INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL.,
Appellants,

S. B. STREET, ET AL., Appellees.

On Appeal from the Supreme Court of Georgia

**APPELLANTS' OPPOSITION TO MOTION FOR
LEAVE TO FILE BRIEF AMICUS CURIAE
(HOSTETLER)**

MILTON KRAMER
LESTER P. SCHWENT

AND KRAMER
1625 K Street, N. W.
Washington 6, D. C.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1960

No. 4

INTERNATIONAL ASSOCIATION OF MACHINISTS
Appellants,

v.

S. B. STREET, ET AL., *Appellees.*

On Appeal from the Supreme Court of Georgia

**APPELLANTS' OPPOSITION TO MOTION
LEAVE TO FILE BRIEF AMICUS CURIAE
(HOSTETLER)**

On January 17, 1961, the day oral reargument in this case commenced, appellants were served with a copy of the Motion and Brief of Kenneth A. Hostetler. Apart from the numerous rules of this Court violated by the Motion and tending to the prejudice of the Motion should be denied for at least two reasons.

No explanation is offered for the extreme haste of the Motion other than the simple statement

is filed "within five days after they obtained a copy of the briefs heretofore filed". The Clerk's office does not keep briefs confidential, and permits their examination at reasonable times. Furthermore, briefs amicus curiae should be filed at the same time as the brief of the party it supports, not after examining all the briefs of all parties.

No useful purpose would be served by granting the Motion. The Brief is predicated on a misapprehension of the facts. No record references are made in support of the factual statements. It is not true that funds are transferred from the "educational fund" to the "free fund" of Railway Labor's Political League. And even if such statement were true, or if there were otherwise a violation of the Corrupt Practices Act, it is not perceived why such circumstance should result in the enjoining of a union-shop agreement if other remedies are available. Apart from criminal sanctions, a remedy would be afforded by Section 8(d) of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C., Sec. 501. Furthermore, the Brief misconceives the nature of this action. It urges that this Court should not enforce the agreement "at the behest of a guilty party". We are in this case asking any court to enforce the agreement.

We submit that it is abundantly clear that the Motion should be denied.

Respectfully submitted.

MILTON KRAMER
LESTER P. SCHOENE

SCHOENE AND KRAMER
1625 K Street, N. W.
Washington 6, D. C.

JAN 31 1961

JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 4

INTERNATIONAL ASSOCIATION OF MACHINISTS, *et al.*,*Appellants,*

—v.—

S. B. STREET, *et al.*,*Appellees.*

ON APPEAL FROM THE SUPREME COURT OF GEORGIA

**OPPOSITION BY INDIVIDUAL APPELLEES,
S. B. STREET, *ET AL.*, TO MOTION OF
KENNETH L. HOSTETLER, *ET AL.*,
FOR LEAVE TO FILE BRIEF AS
*AMICI CURIAE***

E. SMYTHE GAMBRELL
W. GLEN HARLAN
CHARLES A. MOYE, JR.
TERRY P. MCKENNA

GAMBRELL, HARLAN, RUSSELL, MOYE & RICHARDSON
825 Citizens & Southern
National Bank Building
Atlanta 3, Georgia

January 30, 1961

IN THE
Supreme Court of the United States

OCTOBER TERM, 1960

No. 4

INTERNATIONAL ASSOCIATION OF MACHINISTS, *et al.*,

Appellants,

—v.—

S. B. STREET, *et al.*,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF GEORGIA

**OPPOSITION BY INDIVIDUAL APPELLEES,
S. B. STREET, *ET AL.*, TO MOTION OF
KENNETH L. HOSTETLER, *ET AL.*,
FOR LEAVE TO FILE BRIEF AS
*AMICI CURIAE***

Individual appellees object for the following reasons to the motion of Kenneth L. Hostetler, *et al.*, for leave to file brief as *amici curiae* on the merits of this case.

Movants' motion is not timely filed. The record in this case has been before this Court for more than a year. Each side has filed at least two briefs, and two full arguments have been had. The case has been fully briefed, and additional documents will only confuse, not clarify, the issues.

Movants have not shown any interest in this case which has not been, and is not being, adequately represented by

the parties hereto. There is no allegation of interest on the part of movants which requires representation. The fact that movants are connected with other litigation, which might be benefited by the issue there were determined here, gives them an interest in this case.

For the foregoing reasons, the individual movants withheld consent to the filing of a brief against Kenneth L. Hostetler, *et al.*, and respectfully request that the Court should deny their motion for leave to file a brief and for expedited distribution thereof.

Respectfully submitted,

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W. GLEN HARLAN

CHARLES A. MOYE, JR.

Attorneys for Individual

825 Citizens & South

Bank Building, Atlanta

TERRY P. McKENNA

GAMBRELL, HARLAN, RUSSELL, MOYE & RICHARDS

Atlanta, Georgia

Of Counsel

January 30, 1961

SUPREME COURT OF THE UNITED STATES

No. 4.—OCTOBER TERM, 1960.

International Association of
Machinists, et al., Appel-
lants,

v.

S. B. Street, et al.

On Appeal From the
Supreme Court of the State of Georgia

[June 19, 1961.]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

A group of labor organizations, appellants here, carriers comprising the Southern Railway System entered into a union-shop agreement pursuant to the authority of § 2, Eleventh of the Railway Labor Act.¹ The

¹ 64 Stat. 1238, 45 U. S. C. § 152, Eleventh. The section reads: "Eleventh. Notwithstanding any other provisions of title 45 or of any other statute or law of the United States, or of any State, any carrier or carriers as defined in this chapter and a labor organization or labor organizations designated and authorized to represent employees in accordance with the requirements of this chapter shall be permitted—

"(a) to make agreements, requiring, as a condition of employment, that within sixty days following the beginning of employment, or the effective date of such agreements, or the later, all employees shall become members of the labor organization representing their craft or class: *Provided*, That no employer shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other employees or with respect to employees to whom membership was terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

"(b) to make agreements providing for the deduction from the wages of any carrier or carriers from the wages of its or their employees

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Individual Appellees
Southern National
Atlanta 3, Georgia

RICHARDSON

2 INTERNATIONAL MACHINIS

ment requires each of the appellees, carriers, as a condition of continued employment the appellant union representing his

craft or class and payment to the labor organization of the craft or class of such employees, of any dues, fees, and assessments (not including fines and penalties) required as a condition of acquiring or retaining membership. *Provided*, That no such agreement shall be effective until any individual employee until he shall have been furnished with a written assignment to the labor organization, and shall have paid ship dues, initiation fees, and assessments, within 30 days in writing after the expiration of one year or the expiration date of the applicable collective agreement, whichever is later.

"(c) The requirement of membership in a labor organization shall be satisfied, as to both a present or future train, yard, or hostling service, that is, an employee of the services or capacities covered in the definition of the First Division of the National Railroad Labor Relations Act, that said employee shall hold or acquire membership in a labor organization, national in scope, organized in accordance with this chapter and admitting to membership employees in any of said services; and no agreement made pursuant to paragraph (b) of this paragraph shall provide for the payment of his wages for periodic dues, initiation fees, or assessments to any labor organization other than that in which he holds membership: *Provided, however*, That as to an employee performing services on a particular carrier at the effect of a collective agreement on a carrier, who is not a member of a labor organization, national in scope, organized in accordance with this chapter and admitting to membership employees in any of said services, such employee, as a condition of his employment, may be required to become a member of a labor organization representing the craft in which he is employed, within 30 days of the first agreement applicable to him: *Provided*, that nothing herein or in any such agreement or agreement shall prevent an employee from changing membership from one labor organization to another organization admitting to membership employees in any of said services.

"(d) Any provisions in paragraphs Fourth and Fifth in conflict herewith are to the extent of such conflict hereby repealed.

ISTS v. STREET.

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INTERNATIONAL MACHINISTS v. S

craft the periodic dues, initiation fees and
uniformly required as a condition of acquir-
ing union membership. The appellees,
themselves and of employees similarly situated,
this action in the Superior Court of Bibb County
alleging that the money each was thus com-
to hold his job was in substantial part used
campaigns of candidates for federal and
whom he opposed, and to promote the pro-
political and economic doctrines, concepts and
with which he disagreed. The Superior Court
the allegations were fully proved² and en-

² The pertinent findings of the trial court are:

"(5) The funds so exacted from plaintiffs and the
resent by the labor union defendants have been, and
in substantial amounts by the latter to support the
paigns of candidates for the offices of President and
of the United States, and for the Senate and House
of the United States, opposed by plaintiffs and the
resent, and also to support by direct and indirect fin-
tions and expenditures the political campaigns of candi-
and local public offices, opposed by plaintiffs and the
sent. The said funds are so used both by each of
defendants separately and by all of the labor union
lectively and in concert among themselves and with
tions not parties to this action through associations,
mittees formed for that purpose.

"(6) Those funds have been and are being used
amounts to propagate political and economic doctrin-
ideologies and to promote legislative programs oppo-
and the class they represent. Those funds have al-
being used in substantial amounts to impose upon p-
class they represent, as well as upon the general pu-
to those doctrines, concepts, ideologies and program-

"(7) The exaction of moneys from plaintiffs and
represent for the purposes and activities described a-
sonably necessary to collective bargaining or to maint-
ence and position of said union defendants as effe-
agents or to inform the employees whom said defen-
of developments of mutual interest. [Note 2 con-

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the appellants and the car-
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I.

THE HANSON DECISION.

We held in *Railway Employees' Dept. v. H*
U. S. 225, that enactment of the provision of § 2
authorizing union-shop agreements between
railroads and unions of their employees was a v
cise by Congress of its powers under the Comme
and did not violate the First Amendment or the
ess Clause of the Fifth Amendment. It is ar
our disposition of the First Amendment claims
disposes of appellees' constitutional claims in
adversely to their contentions. We disagree. A
from its history, that case decided only that § 2,
in authorizing collective agreements conditio
employees' continued employment on payment
dues, initiation fees and assessments, did n
face impinge upon protected rights of associat
Nebraska Supreme Court in *Hanson*, upho
employees' contention that the union shop coul
stitutionally be enforced against them, stated
union shop "improperly burdens their right to
infringes upon their freedoms. This is particu
as to the latter because it is apparent that som
labor organizations advocate political ideas, sup
ical candidates, and advance national economic
which may or may not be of an employee's choi
Neb. 669, 697. That statement was made in
text of the argument that compelling an indi
become a member of an organization with politic
is an infringement of the constitutional fr
association, whatever may be the constitution

pose, violate their rights of freedom of speech and depr
their property without due process of law under the Fir
Amendments to the Federal Constitution?" — Ga., at

6 INTERNATIONAL MACHINISTS v. STREET

compulsory financial support of group activities outside the political process. The Nebraska court's reference to the support of political ideas, candidates, and economic concepts "which may or may not be of an employee's choice" indicates that it was considering at most the question of compelled membership in an organization with political facets. In their brief in this Court the appellees in *Hanson* argued that First Amendment rights would be infringed by the enforcement of an agreement which would enable compulsorily collected funds to be used for political purposes. But there was nothing concrete in the record to show the extent to which the unions were actually spending money for political purposes and what these purposes were, nothing to show the extent to which union funds collected from members were being used to meet the costs of political activity and the mechanism by which this was done, and nothing to show that the employees there involved opposed the use of their money for any particular political objective.⁵ In contrast, the present record contains detailed information on all these points, and specific findings were made in the courts below as to all of them. When it is recalled that the action in *Hanson* was brought before the union-shop agreement became effective and that the appellees never

⁵ The record contained one union constitution with a statement of political objectives and various other union constitutions authorizing political education activity, lobbying before legislative bodies, and publication of union views. There was an indication that *Labor* was furnished to members of some unions. There was also material taken from the hearings on § 2, Eleventh which included statements of management opponents of the Act that union dues were used for political activities and employees should not be forced to join unions if they did not like the purposes for which their funds would be spent. And there were statements by Rep. Hoffman of Michigan during the debate on the bill, warning union leaders not to levy "political assessments" and use the Act to force their members to meet those assessments.

thereafter showed that the unions were actually engaged in furthering political causes with which they disagreed and that their money would be used to support such activities, it becomes obvious that this Court passed merely on the constitutional validity of § 2, Eleventh of the Railway Labor Act on its face, and not as applied to infringe the particularized constitutional rights of any individual. On such a record, the Court could not have done more, consistently with the restraints that govern us in the adjudication of constitutional questions and warn against their premature decision. We therefore reserved decision of the constitutional questions which the appellees present in this case. We said: "It is argued that compulsory membership will be used to impair freedom of expression. But that problem is not presented by this record . . . if the exaction of dues, initiation fees, or assessments is used as a cover for forcing ideological conformity or other action in contravention of the First Amendment, this judgment will not prejudice the decision in that case. For we pass narrowly on § 2, Eleventh of the Railway Labor Act. We only hold that the requirements for financial support of the collective-bargaining agency by all who receive the benefits of its work is within the power of Congress under the Commerce Clause and does not violate either the First or the Fifth Amendments." *Id.*, p. 238. See also p. 242 (concurring opinion). Thus all that was held in *Hanson* was that § 2, Eleventh was constitutional in its bare authorization of union-shop contracts requiring workers to give "financial support" to unions legally authorized to act as their collective bargaining agents. We sustained this requirement—and only this requirement—embodied in the statutory authorization of agreements under which "all employees shall become members of the labor organization representing their craft or class." We clearly passed neither upon

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forced association in any other aspect nor upon the issue of the use of exacted money for political causes which were opposed by the employees.

The record in this case is adequate squarely to present constitutional questions reserved in *Hanson*. These are questions of the utmost gravity. However, the restraints against unnecessary constitutional decision counsel against their determination unless we must conclude that Congress, in authorizing a union shop under § 2, Eleventh, also meant that the labor organization receiving an employee's money should be free, despite that employee's objection, to spend his money for political causes which he opposes. Federal statutes are to be so construed as to avoid serious doubt of their constitutionality. "When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided." *Crowell v. Benson*, 285 U. S. 22, 62. Each named appellee in this action has made known to the union representing his craft or class his dissent from the use of his money for political causes which he opposes. We have therefore examined the legislative history of § 2, Eleventh in the context of the development of unionism in the railroad industry under the regulatory scheme created by the Railway Labor Act to determine whether a construction is "fairly possible" which denies the authority to a union, over the employee's objection, to spend his money for political causes which he opposes. We conclude that such a construction is not only "fairly possible" but entirely reasonable, and we therefore find it unnecessary to decide the correctness of the constitutional determinations made by the Georgia courts.

II.

THE RAIL UNIONS AND UNION SECURITY.

The history of union security in the railway industry is marked *first*, by a strong and long-standing tradition of voluntary unionism on the part of the standard rail unions; *second*, by the declaration in 1934 of a congressional policy of complete freedom of choice of employees to join or not to join a union; *third*, by the modification of the firm legislative policy against compulsion, but only as a specific response to the recognition of the expenses and burdens incurred by the unions in the administration of the complex scheme of the Railway Labor Act.

When the question of union security in the rail industry was first given detailed consideration by Congress in 1934 "only one of the standard unions had security pro-

"[T]hese railroad labor organizations in the past have refrained from advocating the union shop agreement, or any other type of union security. It has always been our philosophy that the strongest and most militant type of labor organization was the one whose members were carefully selected and who joined conviction and a desire to assist their fellows in promoting objects of labor unionism . . ." Statement of Charles J. MacGowan, vice president of the International Brotherhood of Boilermakers, Transcript of Proceedings, Presidential Board, appointed Feb. 20, 1943, p. 5358. See also Transcript of Proceedings, Presidential Emergency Board No. 98, appointed pursuant to Exec. Order No. 10306, Nov. 15, 1951, pp. 835-845, Carriers' Exhibit W-28. For an analysis of the reasons for the long-time absence of pressure for union security agreements in the railway industry, see Toner, *The Closed Shop*, pp. 93-114.

The principle of freedom of choice had been incorporated in two earlier pieces of legislation governing railroads. The Bankruptcy Act of March 3, 1933, 47 Stat. 1481, §§ 77 (p), (q), provided that no judge, trustee, or receiver of a carrier should interfere with employee organization, influence or coerce employees to join a company union, or require employees to join or refrain from joining a labor organization. The Emergency Railroad Transportation Act of June 16, 1933, 48 Stat. 214, § 7 (e), required all carriers to abide

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visions in any of its contracts. The Brotherhood of Railroad Trainmen maintained a number of so-called "percentage" contracts, requiring that in certain classes of employees represented by the Brotherhood, a specified percentage of employees had to belong to the union. These contracts applied only to yard conductors, yard brakemen and switchmen, and covered no more than 10,000 workers, about 1% of all rail employees. See testimony of Joseph B. Eastman, Federal Coordinator of Transportation, to Chairman of the House Committee on Interstate and Foreign Commerce, June 7, 1934, H. Rep. No. 1944, 73d Cong., 2d Sess., pp. 14-16; testimony of James A. Farquharson, legislative representative of the Brotherhood of Railroad Trainmen, Hearings on H. R. 7650, House Committee on Interstate and Foreign Commerce, 73d Cong., 2d Sess., pp. 94-105.

During congressional consideration of the 1934 legislation, the rail unions attempted to persuade Congress to preclude them from negotiating security arrangements. By amendments to the original proposal, they sought to assure that the provision which became § 2, F. L. A., should prevent the carriers from conditioning employment on membership in a company union but should exempt the standard unions from its prohibitions. The Brotherhood of Railroad Trainmen, the only union which stood to lose existing contracts if the section was not limited to company unions, especially urged such a limitation. See testimony of A. F. Whitney, president, S. Rep. No. 1065, 73d Cong., 2d Sess., pt. 2, p. 2; see also 78 Cong. Rec. 12376.

by these provisions of the Bankruptcy Act. The latter provision was temporary, with a maximum duration of two years. See testimony of Joseph B. Eastman, Federal Coordinator of Transportation, Hearings on H. R. 7650, 73d Cong., 2d Sess., pp. 22-23, and his interpretation of this legislation, 7 Interstate Commerce Acts 1934 Supp., pp. 5972-5973.

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The unions succeeded in having the House incorporate such a limitation in the bill it passed. See H. R. Rep. No. 1944, 73d Cong., 2d Sess. 2, 6; 78 Cong. Rec. 11710-11720. But the Senate did not acquiesce. Eastman, a firm believer in complete freedom of employees in their choice of representatives, strongly opposed the limitation. He characterized it as "vicious, because it strikes at the principle of freedom of choice which the bill is designed to protect. The prohibited practices acquire no virtue by being confined to so-called 'standard unions.' . . . Within recent years, the practice of tying up men's jobs with labor-union membership has crept into the railroad industry which theretofore was singularly clean in this respect. The practice has been largely in connection with company unions but not entirely. If genuine freedom of choice is to be the basis of labor relations under the Railway Labor Act, as it should be, then the yellow-dog contract, and its corollary, the closed shop, and the so-called 'percentage contract' have no place in the picture." Hearings on S. 3286, Senate Committee on Interstate Commerce, 73d Cong., 2d Sess., p. 157.* Eastman's views prevailed in the Senate, and the House concurred

* Eastman further emphasized that only the Trainmen were immediately affected by the broader prohibition he supported. "I am confident that the only real support for the proposed amendments is from a single organization. None of the other standard organizations has anything to gain from such changes in the bill." Eastman letter, *supra*, p. 15. For other expressions of Eastman's views see House Hearings, *supra*, pp. 28-29; Hearings on H. R. 9861, House Rules Committee, 73d Cong., 2d Sess., pp. 22-24. That other rail unions were still committed at this time to the principle of voluntarism, despite their support of the Trainmen's position, is indicated by the statement of George H. Harrison, representing the Railway Labor Executives' Association: "Now, I hope the committee will not get the thought from these statements that the railroad labor unions that I speak for want to force these men into our unions, because that is not our purpose;" House Hearings on H. R. 7650, *supra*, p. 86.

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in a final version of §.2, Fifth, providing that "[r]ier . . . shall require any person seeking employment to sign any contract or agreement promising to not to join a labor organization." See 78 Cong. Rec. 12369-12376, 12382-12388, 12389-12398, 12400-12549-12555.

During World War II, the nonoperating union made an unsuccessful attempt to obtain union security as a condition to an effort to secure a wage increase. Following the failure of negotiations and mediation, a Presidential Emergency Board was appointed. Two principal reasons were advanced by the unions. They urged that in view of their pledge not to strike for the duration of the war and their responsibilities to assure uninterrupted operation of the railroads, they were justified in seeking to maintain their positions by union security arrangements. They also maintained that since they secured their gains through collective bargaining for all employees represented, it was fair that the costs of their operations be shared by all workers. The Board recommended the withdrawal of the request, concluding that the union shop was plainly forbidden by the Railway Labor Act. In any event the unions had failed to show its necessity or utility. Presidential Emergency Board, Report, Feb. 20, 1943, Report of May 24, 1943; Supplemental Report, May 29, 1943. The Report said: "The Board is convinced that the essential element of a union shop as defined in the employees' request is prohibited by section 2 of the Railway Labor Act. The intent of Congress in this respect is manifest, with unusual clarity." Supplemental Report, p. 29.* On the merits of the issue, the Board

* The Board's view as to the illegality of a union shop was supported by an opinion of the Attorney General, 40 Op. Atty. Gen. 59, p. 254 (Dec. 29, 1942).

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rejected the claim that union security was necessary to protect the bargaining position of the unions: "[T]he unions are not suffering from a falling off in membership. On the contrary, . . . membership has been growing and at the present time appears to be the largest in railroad history, with less than 10 percent nonmembership among the employees here represented." Supplemental Report, p. 31. "[T]he evidence presented with respect to danger from predatory rivals seemed to the Board lacking in sufficiency, especially so in the light of the evidence concerning membership growth." *Ibid.* "[N]o evidence was presented indicating that the unions stand in jeopardy as a reason of carrier opposition. A few railroads were mentioned on which some of the unions do not represent a majority of their craft or class, and do not have bargaining relationships with the carrier. But the exhibits show that these unions are the chosen representatives of the employees on the overwhelming majority of the railroads, and that recognition of the unions is general. The Board does not find therefore that a sufficient case has been made for the necessity of additional protection of union status on the railroads." *Id.*, p. 32. The unions acceded to the Board's recommendation.

The question of union security was reopened in 1950. Congress then evaluated the proposal for authorizing

¹⁰ At the time of the congressional deliberations which preceded enactment of the Labor-Management Relations Act of 1947, the Trainmen, through their president, A. F. Whitney, advocated a closed shop, and urged the repeal of the provisions which prohibited it. Hearings on Amendments to the National Labor Relations Act, H. Committee on Education and Labor, 80th Cong., 1st Sess., pp. 1552-1561. However, the Railway Labor Executives' Association opposed amendment of the 1934 Act. A. E. Lyon, executive secretary of the Association, said: "We want to make it very clear that we are proposing no amendments to the Railway Labor Act. We believe none is necessary, and we are opposed to those which Mr. Whitney suggested." Hearings, p. 3722. Lyon added: "We are not asking

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union shop primarily in terms of its relation to the financing of the unions' participation in the work created by the Railway Labor Act to achieve the efficient discharge by the carriers of the functions with minimum disruption from labor. The framework for fostering voluntary adjustment between the carriers and their employees in the discharge of the efficient discharge by the carriers of the functions with minimum disruption from labor has no statutory parallel in other industry. That the product of a long legislative evolution, is more complex than that of any other industry. The labor of interstate carriers have been a subject of numerous enactments since 1888.¹¹ For a time, after V

to amend the Railroad Labor Act and provide a closer response to the query, "By the services you have performed members you have attracted people voluntarily to join correct?" Lyon replied: "I think that is true. And union people believe they would rather have members because they want to, rather than because they have

¹¹ The Act of 1888, 25 Stat. 501, authorized the creation of voluntary arbitration to settle controversies between their employees which threatened to disrupt transport. The Act also provided for a temporary presidential commission to investigate the causes of a controversy and the adjusting it; the commission was to report the results of its investigation to the President and Congress. § 6.

In 1898 Congress repealed the Act of 1888 and passed the Act, 30 Stat. 424, providing that "whenever a controversy arising out of wages, hours of labor, or conditions of employment between a carrier subject to this Act and the employees of such carrier, seriously interrupting or threatening to interrupt the business of said carrier," the Chairman of the Interstate Commerce Commission and the Commissioner of Labor should attempt to settle the dispute, at the request of either party, by conciliation. § 2. If these methods failed, a board of voluntary arbitration could be set up with representatives on it of the "labor organization to which the employees directly or indirectly belong" § 3. Section 10 of the Act also made it an employer to require an employee to promise not to remain a member of a labor organization or to discontinue

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Congress experimented with a form of compulsory
tration.¹² The experiment was unsuccessful. Co
has since that time consistently adhered to a regu
policy which places the responsibility squarely up

an employee for such membership, a provision which was held
stitutional in *Adair v. United States*, 208 U. S. 161.

The Erdman Act was superseded in 1913 by the passage
Newlands Act, 38 Stat. 103. It created a Board of Mediation
Conciliation to which either party to a controversy could re
dispute and which could proffer its services even without res
an interruption of traffic was imminent and seriously jeopardi
public interest. The Board also was authorized to give opin
to the meaning or application of agreements reached through
tion. § 2. The arbitration procedures set up by the Erdman A
further elaborated. §§ 3-8.

In 1916 Congress imposed the 8-hour day on the railro
Stat. 721. During the period of federal operation of the railro
World War I and afterwards the Federal Government e
agreements with many of the national labor organizations as
sentatives of the railroad employees. Boards of adjustment w
set up to handle disputes concerning the interpretation and a
tion of agreements. See Hearings on S. 3295, Subcommi
Senate Committee on Labor and Public Welfare, 81st Cong., 2
pp. 216, 305. By the Transportation Act of 1920, 41 Stat.
Congress terminated federal control and established an ex
new regulatory scheme. See n. 12, *infra*. See generally Hear
S. 3463, Subcommittee of the Senate Committee on Labor and
Welfare, 81st Cong., 2d Sess., pp. 124-131.

¹² The Transportation Act of 1920 provided for a Railroad
Board, with power to render a decision in disputes between
and their employees over wages, grievances, rules, or working
tions not resolved through conference and adjustment proc
§ 307. In rendering a decision on wages or working conditio
Board had a duty to establish wages and conditions which in i
ion were "just and reasonable." § 307 (d). It was held, h
that the decisions of the Board could not be enforced by legal
See *Pennsylvania R. Co. v. United States Railroad Labor Bo*
U. S. 72; *Pennsylvania R. System v. Pennsylvania R. Co*
U. S. 203. By 1926 the Board had lost the confidence of b
unions and many of the railroads. Commented the Senate C
tee which considered the Railway Labor Act of 1926: "In view

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carriers and the unions mutually to work out all aspects of the labor relationship. This was embodied in the Railway Labor Act of 1926, which remains the basic regulatory enactment. The Senate Report on the bill which became the Act stated: "The question was . . . presented whether [for the Act of 1920] should consist of a system with adequate means provided for its enforcement, whether it was in the public interest to establish machinery for amicable adjustment of disputes agreed upon by the parties and to the satisfaction of both parties were committed. . . . The opinion that it is in the public interest to maintain the trial of the method of amicable adjustment by the parties, rather than to attempt to compel the conditions to use the entire power of the Government to deal with these labor disputes." S. Rep. No. 100, 66th Cong., 1st Sess., p. 4. The reference to the fact that the Act was agreed upon by the parties was to "the fact that the Railway Labor Act of 1926 came on the statute books as a result of an agreement between the railroads and the unions on the need for such legislation. It is a fact that the railroads and the railroad unions agreed to write the Railway Labor Act of 1926."

fact that the employees absolutely refuse to appear before the board and that many of the important railroad unions opposed to it, that it has been held by the Supreme Court that the power to enforce its judgments, that its authority is not respected by the employees and by a number of important unions, that the President has suggested that it would be wise to substitute for it, and that the party platforms of both the Republican and Democratic Parties in 1924 clearly indicated opposition to the provisions of the transportation act relating to labor relations. The committee concluded that the time had arrived when the act should be abolished and the provisions relating to labor relations in the transportation act, 1920, should be repealed." S. Rep. No. 100, 66th Cong., 1st Sess., pp. 3-4.

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formally enacted their agreement." *Railway En-
Dept. v. Hanson*, *supra*, p. 240 (concurring
See generally Murphy, Agreement on the Railroads
Joint Railway Conference of 1926, 11 Lab. L. J. 8

"All through the [1926] act is the theory
agreement is the vital thing in life." State
Donald R. Richberg, Hearings on H. R. 7180, Hou-
mittee on Interstate and Foreign Commerce, 69th
1st Sess., pp. 15-16. The Act created affirmative
duties on the part of the carriers and their employ-
exert every reasonable effort to make and maintain
ments concerning rates of pay, rules, and working
tions, and to settle all disputes, whether arising
the application of such agreements or otherwise.
§ 2, First. See *Texas & N. O. R. Co. v. Brotherhood
Railway & Steamship Clerks*, 281 U. S. 548.
also established a comprehensive administrative
ratus for the adjustment of disputes, in conference
tween the parties, § 2, Second, Third and Fourth
Sixth), and if not so settled, in submissions to the
adjustment, § 3, or the National Mediation Board.
And the legislation expanded the already exist-
tary arbitration machinery, §§ 7, 8, 9.

A primary purpose of the major revisions made
was to strengthen the position of the labor organ-
vis-à-vis the carriers, to the end of furthering
cess of the basic congressional policy of settle-
ment of the industry's labor problems between
organizations and effective labor organizations.
unions claimed that the carriers interfered with
employees' freedom of choice of representatives
ing company unions, and otherwise attempting to
mine the employees' participation in the process of
lective bargaining. Congress amended § 2, to
reinforce the prohibitions against interference with
choice of representatives, and to permit the employees

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to select nonemployee representatives. Fourth was added guaranteeing employee organize and bargain collectively, and it the enforceable duty of the carriers to the representatives of the employees, § *Virginian R. Co. v. System Federation*, 30 was made explicit that the representative majority of any class or craft of employees exclusive bargaining representative of all of that craft or class. "The minority members are thus deprived by the statute of the right which they would otherwise possess, to choose a representative of their own, and its members cannot bargain on behalf of themselves as to matters which are the subject of collective bargaining." *Ste. & N. R. Co.*, 323 U. S. 192, 200. "Congress clothed the bargaining representative with powers comparable to those possessed by a legislative body to create and restrict the rights of those whom it represents" *Id.*, p. 202. In addition to determining the unions' status in relation to both the carriers and the employees, the 1934 Act created the Railroad Adjustment Board and provided that employee representatives were to be chosen from organizations national in scope. § 3. The Board given jurisdiction to settle what are termed "major disputes" in the railroad industry, primarily growing from the application of collective bargaining agreements to particular situations. See *Union Pacific v. Public Price*, 360 U. S. 601.

In sum, in prescribing collective bargaining as the method of settling railway disputes, in determining the status of exclusive representative organizations, in negotiation and administration of collective bargaining, and in giving them representation on the board to adjudicate grievances, Congress has given

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es. A new § 2, employees the right to and Congress made s "to treat with" § 2, Ninth. See 300 U. S. 515. It tive selected by a yees should be the all the employees members of a craft e right, which they representative of argain individually which are properly *Steele v. Louisville* gress has seen fit to with powers com- ative body both to ee whom it repre- to thus strengthen- both the carriers and the National Rail- d that the 18 em- nosen by the labor . This Board was termed minor dis- ly grievances arising gaining agreements a *Pacific R. Co. v.*

bargaining as the in conferring upon representatives in the llective agreements, the statutory board s given the unions a

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clearly defined and delineated role to play in eff the basic congressional policy of stabilizing labor in the industry. "It is fair to say that every sta evolution of this railroad labor code was prop infused with the purpose of securing self-ad between the effectively organized railroads and th effective railroad unions and, to that end, of est facilities for such self-adjustment by the railr munity of its own industrial controversies. . assumption as well as the aim of that Act [of 1 process of permanent conference and negotiation the carriers on the one hand and the employees their unions on the other." *Elgin, J. & E. R. Co. v. Burley*, 325 U. S. 661, 752-753 (dissenting opin

Performance of these functions entails the ture of considerable funds. Moreover, this C held that under the statutory scheme, a union as exclusive bargaining representative carries w duty fairly and equitably to represent all emp the craft or class, union and nonunion. *Steele v. Louisville & N. R. Co.*, 323 U. S. 192; *Tunstall v. Bro of Locomotive Firemen & Enginemen*, 323 U. S. 2 principal argument made by the unions in 1950 v on their role in this regulatory framework. Th tained that because of the expense of perform duties in the congressional scheme, fairness jus spreading of the costs to all employees who l They thus advanced as their purpose the elimi the "free riders"—those employees who obtained fits of the unions' participation in the machine Act without financially supporting the unions.

George M. Harrison, spokesman for the Railw Executives' Association, stated the unions' cas fashion:

"Activities of labor organizations resultin procurement of employees benefits are co

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the only source of funds with which to carry on these activities is the dues received from members of the organization. We believe that it is essentially unfair for nonmembers to participate in the benefits of these activities without contributing anything to the cost. This is especially true when the collective bargaining representative is one from whose existence and activities he derives most important benefits and one which is obligated by law to extend these advantages to him.

"Furthermore, collective bargaining to the railroad industry is more costly from a monetary standpoint than that carried on in any other industry. The administrative machinery is more complete and more complex. The mediation, arbitration, and Presidential Emergency Board provisions of the act, while greatly in the public interest, are very costly to the unions. The handling of agreement disputes through the National Railroad Adjustment Board also requires expense which is not known to unions in outside industry." Hearings on H. R. 7789, House Committee on Interstate and Foreign Commerce, 81st Cong., 2d Sess., p. 10.

This argument was decisive with Congress. The House Committee Report traced the history of previous legislation in the industry and pointed out the duty of the union acting as exclusive bargaining representative to represent equally all members of the class. "Under the act, the collective bargaining representative is required to represent the entire membership of the craft or class, including non-union members, fairly, equitably, and in good faith. Benefits resulting from collective bargaining may not be withheld from employees because they are not members of the union." H. R. Rep. No. 2811, 81st Cong., 2d Sess., p. 4. Observing that about 75% or 80% of all railroad employees were believed to belong to a union, the report continued: "Nonunion members, neverthe-

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less, share in the benefits derived from collective agreements negotiated by the railway labor unions but bear no share of the cost of obtaining such benefits." *Ibid.*¹³ These considerations overbore the arguments in favor of the earlier policy of complete individual freedom of choice. As we said in *Railway Employees' Dept. v. Hanson*, *supra*, p. 235, "[t]o require, rather than to induce, the beneficiaries of trade unionism to contribute to its costs may not be the wisest course. But Congress might well believe that it would help to insure the right to work in and along the arteries of interstate commerce. No more has been attempted here. . . . The financial support required relates . . .

¹³ For reiteration by various union spokesmen of this purpose of eliminating the problems created by the "free rider," see Hearings on S. 3295, *supra*, pp. 6, 32-33, 36, 40, 66, 130, 236-237; Hearings on H. R. 7789, *supra*, pp. 9, 19, 25-26, 29, 37-38, 49-50, 79, 81, 85, 87, 89, 228, 240-241, 250, 253, 255, 275. For other statements by members of Congress indicating their acceptance of this justification for the legislation, see Senate Hearings, *supra*, pp. 169-171; House Hearings, *supra*, pp. 25, 87, 106, 110, 139; 96 Cong. Rec. 16279, 17050-17051, 17055, 17057, 17058.

Mr. Harrison expressly disclaimed that the union shop was sought in order to strengthen the bargaining power of the unions. He said:

"I do not think it would affect the power of bargaining one way or the other If I get a majority of the employees to vote for my union as the bargaining agent, I have got as much economic power at that stage of development as I will ever have. The man that is going to scab—he will scab whether he is in or out of the union, and it does not make any difference." House Hearings, *supra*, pp. 20-21.

Nor was any claim seriously advanced that the union shop was necessary to hold or increase union membership. The prohibition against union security in the 1934 Act had not interfered with the growth of union membership or caused the unions to lose their positions as exclusive bargaining agents. See *AFL v. American Sash Co.*, 335 U. S. 548-549, n. 4 (concurring opinion); see also Exhibits W-23, W-28, pp. 38-51, Transcript of Proceedings, Presidential Emergency Board No. 98, appointed pursuant to Exec. Order No. 10306, Nov. 15, 1951, Carriers' Exhibits W-23, W-28, pp. 38-51

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to the work of the union in the realm of collective bargaining." ¹⁴ The conclusion to which this history clearly points is that § 2, Eleventh contemplated compulsory unionism to force employees to share the costs of negotiating and administering collective agreements, and the costs of the adjustment and settlement of disputes. ¹⁵ One looks

¹⁴ The unions continued to urge the elimination of the problems created by the "free rider" as the justification for the union shop in the proceedings before the Presidential Emergency Board which recommended that the carriers make the agreements involved in this case. Mr. Harris said: "... the railroad unions' primary purpose in seeking and obtaining the amendment to the Railway Labor Act in 1951 to permit the check-off for payments of dues, was to eliminate the 'free rider,' the guy who drags his feet, a term which is applied by unions to non-members who obtain, without cost to themselves, the benefits of collective bargaining procured through the efforts of the dues-paying members." Transcript of Proceedings, Presidential Emergency Board No. 98, appointed pursuant to Exec. Order No. 10306, Nov. 15, 1951, p. 150. See also Transcript, pp. 40-44, 144-156, 182-183, 186-188, 202-203, 268, 283-286, 289, 545, 608-611, 1893, 1901, 2136, 2495-2497, 2795, 2839, 2930, 3014-3015, 3018-3019.

¹⁵ Section 2, Eleventh (c), which gives scope for intercraft mobility in the rail industry, is consistent with the view that the primary union and congressional concern was with the elimination of the "free rider" who did not support his representative's performance of its functions under the Act. The section provides that an operating employee cannot be required to become a member of his craft or class representative if "said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services" This Court held in *Pennsylvania R. Co. v. Rychlik*, 352 U. S. 480, that the unions "national in scope" contemplated by this provision are those which have already qualified as electors under § 3 of the Act to participate in the National Railroad Adjustment Board. As the court said in *Pigott v. Detroit, T. & I. R. Co.*, 116 F. Supp. 949, 955, n. 11, aff'd, 221 F. 2d 736: "Each union participating in the agencies of the Act must itself pay for the salaries and expenses of its officials who serve in such agencies. This constitutes a considerable financial burden

in vain for any suggestion that Congress also meant in § 2. Eleventh to provide the unions with a means for forcing employees, over their objection, to support political causes which they oppose.

III.

THE SAFEGUARDING OF RIGHTS OF DISSENT.

To the contrary, Congress incorporated safeguards in the statute to protect dissenters' interests. Congress became concerned during the hearings and debates that the union shop might be used to abridge freedom of speech and beliefs. The original proposal for authorization of the union shop was qualified in only one respect. It provided "That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member" This was primarily designed to prevent discharge of employees for nonmembership where the union did not admit the employee to membership on racial grounds. See House Hearings, p. 68; Senate Hearings, pp. 22-25. But it was strenuously protested that the proposal provided no protection for an employee who disagreed with union policies or leadership. It was argued, for example; that "the right of free speech is at

which must be reflected in the dues charged the employees. Unless a labor organization were obliged to participate in the judgment board machinery before it could qualify for the union shop exception, it would place the bargaining representative in an unfair competitive position with respect to a rival union. Employees would be tempted to desert the organization of a bargaining representative which was assuming its responsibilities under the Act in favor of another union which was not contributing to its operation and which could thereby offer cheaper dues. This would defeat the very purpose of the union amendment which is to compel each employee to contribute his part to the bargaining representative's activities on his behalf, including its participation in the administrative machinery of the Act."

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stake A man could feel that he was no longer able freely to express himself because he could be dismissed on account of criticism of the union . . . House Hearings, p. 115; see also Senate Hearings, 167-169, 320. Objections of this kind led the rail union to propose an addition to the proviso to § 2, Eleventh to prevent loss of job for nonunion membership "with respect to employees to whom membership was denied or terminated for any reason, other than the failure of an employee to tender the periodic dues, fees, and assessments uniformly required as a condition of acquiring or retaining membership." House Hearings, p. 247. Mr. Harrison presented this text and stated, "It is submitted that this bill with the amendment as suggested in this statement remedies the alleged abuses of compulsory union membership as claimed by the opposing witnesses, makes possible the elimination of the 'free rider' and sharing of the burden of maintenance by all the beneficiaries of union activity." House Hearings, p. 247. Mr. Harrison also sought to reassure Committee members as to the possible implications of other language of the proposed bill; he explained that "fees" meant "initial fees," and "assessments" was intended primarily to correct the situation of a union which had only nominal dues so that its members paid "an assessment to finance the activities of the general negotiating committee . . . which will vary month by month, based on the expenses of the work of that committee." P. 257. Or, he explained that an assessment might cover convention expenses. "So we had to use the word 'assessment' in addition to dues and fees because some of the unions collect a nominal amount of dues and an assessment month after month to finance part of the activities, although in total it perhaps is different than the dues paid in the first instance which comprehended all of those expenses." P. 258. In

porting the bill, the Senate Committee expressly noted the protective proviso, S. Rep. No. 2262, 81st Cong., 2d Sess., pp. 3-4, and affixed additional limitations. The words "not including fines and penalties" were added, to make it clear that termination of union membership for their nonpayment would not be grounds for discharge. It was also made explicit that "fees" meant "initiation fees." See 96 Cong. Rec. 16267-16268.

A congressional concern over possible impingements on the interests of individual dissenters from union policies is therefore discernible. It is true that opponents of the union shop urged that Congress should not allow it without explicitly regulating the amount of dues which might be exacted or prescribing the uses for which the dues might be expended.¹⁶ We may assume that Congress was also fully conversant with the long history of intensive involvement of the railroad unions in political activities. But it does not follow that § 2, Eleventh places no restriction on the use of an employee's money, over his objection, to support political causes he opposes merely because Congress did not enact a comprehensive regulatory scheme governing expenditures. For it is abundantly clear that Congress did not completely abandon the policy of full freedom of choice embodied in the 1934 Act, but rather made inroads on it for the limited purpose of eliminating the problems created by the "free rider." That policy survives in § 2, Eleventh in the safeguards intended to protect freedom of dissent. Congress was aware of the conflicting interests involved in the question of the union shop and sought to achieve their accommodation. As was said by the Presidential Emergency Board which recommended

¹⁶ See Senate Hearings, pp. 173-174, 316-317; House Hearings, pp. 160, 172-173. See also 96 Cong. Rec. 17049-17050.

the making of the union-shop agreement involved case:

"It is not as though Congress had believed merely removing some abstract legal barrier and passing on the merits. It was made fully aware it was deciding these critical issues of individual versus collective interests which have been so in this proceeding.

"Indeed, Congress gave very concrete evidence that it carefully considered the claims of the individual to be free of arbitrary or unreasonable restrictions resulting from compulsory unionism. It did not give a blanket approval to union-shop agreements. Instead it enacted a precise and carefully drawn limitation on the kind of union-shop agreements which might be made. The obvious purpose of this careful prescription was to strike a balance between the interests pressed by the unions and the considerations which the Carriers have urged. In providing that a worker should not be discharged if he was denied or if he lost his union membership for any reason other than nonpayment of dues, initiation fees or assessments, Congress definitely indicated it had weighed carefully and given effect to the substance of the arguments against the union shop."

of Presidential Emergency Board No. 98, approved pursuant to Exec. Order No. 10306, Nov. 15, 1948.

We respect this congressional purpose when we construe § 2, Eleventh as not vesting the unions with unlimited power to spend exacted money. We are not called upon to delineate the precise limits of that power in this case. We have before us only the question whether the union's power is restricted to the extent of denying the union a right to force, over the employee's objection, to use his money to support political causes which he opposes. Its use to

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candidates for public office, and advance political programs, is not a use which helps defray the expenses of the negotiation or administration of collective agreements, or the expenses entailed in the adjustment of grievances and disputes. In other words, it is a use which falls clearly outside the reasons advanced by the unions and accepted by Congress why authority to make union-shop agreements was justified. On the other hand, it is equally clear that it is a use to support activities within the area of dissenters' interests which Congress enacted the proviso to protect. We give § 2 Eleventh the construction which achieves both congressional purposes when we hold, as we do, that § 2 Eleventh is to be construed to deny the unions, over an employee's objection, the power to use his exacted funds to support political causes which he opposes.¹⁷

¹⁷ A distinction between the use of union funds for political purposes and their expenditure for nonpolitical purposes is implicit in other congressional enactments. Thus the Treasury has adopted this regulation under § 162 of the Internal Revenue Code to govern the deductibility for income-tax purposes of payments by union members to their union:

"Dues and other payments to an organization, such as a labor union or a trade association, which otherwise meet the requirements of the regulations under section 162, are deductible in full unless a substantial part of the organization's activities consists of [expenditures for lobbying purposes, for the promotion or defeat of legislation for political campaign purposes (including the support of or opposition to any candidate for public office), or for carrying on propaganda (including advertising) related to any of the foregoing purposes]. . . . If a substantial part of the activities of the organization consists of one or more of those specified, deduction will be allowed only for such portion of such dues and other payments as the taxpayer can clearly establish is attributable to activities other than those so specified. The determination as to whether such specified activities constitute a substantial part of an organization's activities shall be based on all the facts and circumstances. In no event shall special assessments or similar payments (including an

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We express no view as to other union expenses objected to by an employee and not made to the costs of negotiation and administration of agreements, or the adjustment and settlement of grievances and disputes. We do not understand, from the findings of the Georgia courts and the decision decided by the Georgia Supreme Court, that before us the matter of expenditures for activities in the area between the costs which led directly to the complaint as to "free riders," and the expenditures for union political activities.¹⁸ We are satisfied, that § 2, Eleventh is to be interpreted to deny the power claimed in this case. The appellate court in insisting that § 2, Eleventh contemplates the use of exacted funds to support political causes of the employee, would have us hold that Congress intended an expansion of historical practices in the area by the rail unions. This we decline to do. The tradition and, from 1934 to 1951, by force of law, the rail unions did not rely upon the compulsion of security agreements to exact money to support political activities in which they engage. Our construction therefore involves no curtailment of the traditional political activities of the railroad unions. It means that those unions must not support those activities against the expressed wishes of a dissenting employee to exact money.¹⁹

increase in dues) made to any organization for any of such purposes be deductible." 26 CFR § 1.162-15 (c) (2); S. Rep. No. 61-10, Int. Rev. Bull., April 17, 1961, p. 49. Cf. *United States*, 358 U. S. 498.

¹⁸ For example, many of the national labor unions maintain benefit funds from the dues of individual members transferred from the locals.

¹⁹ In 1958 Senator Potter proposed an amendment to the National Labor Relations Act legislation that would have given employees subject to a

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IV.

THE APPROPRIATE REMEDY.

Under our view of the statute, however, the decision of the court below was erroneous and cannot stand. The appellees who have participated in this action have in the course of it made known to their respective unions their objection to the use of their money for the support of political causes. In that circumstance, the respective unions were without power to use payments therefor tendered by them for such political causes. However, the union-shop agreement itself is not unlawful. *Ra. Employees' Dept. v. Hanson, supra*. The appellees therefore remain obliged, as a condition of continued employment, to make the payments to their respective unions called for by the agreement. Their right of action is not from constitutional limitations on Congress' power to authorize the union shop, but from § 2, Eleventh Amendment. In other words, appellees' grievance stems from the s-

agreement the right to have their dues used only for collective bargaining and related purposes and would have required the Secretary of Labor, if he determined that the dues were not so expended, to bring an action in behalf of the dissenter for the recovery of the money paid by the dissenter to the union during the life of the agreement and for such other appropriate and injunctive relief as the court deemed just and proper. See 104 Cong. Rec. 11330. Senator Taft advanced this proposal to implement principles which he believed to be already implicit in the labor laws. He said, "I know that when Congress enacted legislation providing for labor and management to enter into contracts for union shops it was intended, under the union-shop principle, that labor would use the dues for collective-bargaining purposes." 104 Cong. Rec. 11215; see also *id.*, p. 11331. The failure of the amendment to be adopted reflected disagreement in the Senate over the scope of its coverage and doubts as to the propriety of the breadth of the remedy. See 104 Cong. Rec. 11214-11330-11347.

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ing of their funds for purposes not authorized in the face of their objection, not from the effect of the union-shop agreement by the mere use of their funds. If their money were used for purposes contemplated by § 2, Eleventh, the appellees would have no grievance at all. We think that an injunction enforcing enforcement of the union-shop agreement is plainly not a remedy appropriate to the violation of the Act's restriction on expenditures. Restraining the collection of all funds from the appellees sweeps too broadly since their objection is only to the uses to which their money is put. Moreover, restraining the use of the funds as the Georgia courts have done would interfere with the appellant unions' performance of their functions and duties which the Railway Labor Act upon them to attain its goal of stability in the industry. Even though the lower court decree is subject to vacation upon proof by the appellants of cessation of proper expenditures, in the interim the decree is absolute against the collection of all funds from those who can show that he is opposed to the expenditure of his money for political purposes which he is entitled to. The complete shutoff of this source of income is the congressional plan to have all employees bear the costs "in the realm of collective bargaining," *U. S.*, at p. 235, and threatens the basic policy of the Railway Labor Act for self-adjustment between effective carrier organizations and effective labor organizations.²⁰

Since the case must therefore be remanded below for consideration of a proper remedy, it is appropriate to suggest the limits within

²⁰ Compare Senator Kennedy's objection to the remedy of all dues contemplated by the Potter amendment, *Rec.* 11346.

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dial discretion may be exercised consistently with the
Railway Labor Act and other relevant public laws.
As indicated, an injunction against enforcement of the
union shop itself through the collection of funds is
ranted. We also think that a blanket injunction against
all expenditures of funds for the disputed purposes
one conditioned on cessation of improper expenditures
would not be a proper exercise of equitable discretion.
Nor would it be proper to issue an interim or temporary
blanket injunction of this character pending a final
dication. The Norris-LaGuardia Act, 47 Stat.
U. S. C. §§ 101-115, expresses a basic policy against
injunction of activities of labor unions. We hold
that the Act does not deprive the federal courts of the
diction to enjoin compliance with various mandates of the
Railway Labor Act. *Virginia R. Co. v. System*
Union, 300 U. S. 515; *Graham v. Brotherhood of Local*
Firemen & Enginemen, 338 U. S. 232. However, the
policy of the Act suggests that the courts should hesi-
tate to fix upon the injunctive remedy for breaches of duty
under the labor laws unless that remedy alone can effec-
tively guard the plaintiff's right. In *Graham* this Court
found an injunction necessary to prevent the breach of
the duty of fair representation, in order that Congress
might not seem to have held out to the petitioner
"an illusory right for which it was denying the
remedy." 338 U. S., at p. 240. No such necessity
for a blanket injunctive remedy because of the absence of
reasonable alternatives appears here. Moreover, the fact
that these expenditures are made for political purposes
is an additional reason for reluctance to impose the
injunctive remedy. Whatever may be the policy of
Congress or the States to forbid unions altogether from
various types of political expenditures, as to which

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express no opinion here,²¹ many of the involved in the present case are made for disseminating information as to candidates and publicizing the positions of the union. As to such expenditures an injunction or restraint on the expression of political ideas would be offensive to the First Amendment. For the union also has an interest in stating its views and is not to be silenced by the dissenters. To attain the reconciliation between majority and dissent in the area of political expression, we think the court administering the Act should select remedies which protect both interests to the maximum extent possible without undue impingement of one on the other.

Among possible remedies which would be appropriate to the injury complained of, two measures with a minimum of administrative difficulty and with little danger of encroachment on the legitimate or necessary functions of the unions. The union, however, would properly be granted only if the union officials who have made known to the union officials that they do not desire their funds to be used for political purposes which they object. The safeguards of § 2,

²¹ No contention was made below or here that the expenditures involved in this case were made in violation of the Corrupt Practices Act, 18 U. S. C. § 610, or any other labor practices legislation.

²² We note that the Labor Management Reporting and Disclosure Act of 1959 requires every labor organization subject to the labor laws to file annually with the Secretary of Labor a report as to certain specified disbursements and expenditures made by it including the purposes thereof. . . . Each union is also required to maintain records in which the supply the necessary basic information and data for the report may be verified. § 206. The information retained in such report must be available to all members. § 201 (c).

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For the majority ws without being a the appropriate dissenting interests think the courts in remedies which pro- n extent possible the other.

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orting and Disclosure subject to the federal of Labor a financial also "other disburse- . . . § 201 (b) (6). s in sufficient detail to data from which the on required to be con- all union members.

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added for the protection of dissenters' interest. sent is not to be presumed—it must affirmatively known to the union by the dissenting employee. union receiving money exacted from an employee a union-shop agreement should not in fairness jected to sanctions in favor of an employee, wh no complaint of the use of his money for such a From these considerations, it follows that the action is not a true class action, for there is no at prove the existence of a class of workers who ha cally objected to the exaction of dues for polit poses. See *Hansberry v. Lee*, 311 U. S. 32, 44. think that only those who have identified them opposed to political uses of their funds are en relief in this action.

One remedy would be an injunction against ture for political causes opposed by the com employee of a sum, from those moneys to be sper union for political purposes, which is so much moneys exacted from him as is the proportion union's total expenditures made for such politic ities to the union's total budget. The union sh be in a position to make up such sum from mor by a nondissenter, for this would shift a dispropo share of the costs of collective bargaining to senter and have the same effect of applying his n support such political activities. A second would be restitution to an individual employee portion of his money which the union expended his notification, for the political causes to which advised the union he was opposed. There shou necessity, however, for the employee to trace hi up to and including its expenditure; if the mor into general funds and no separate accounts of and expenditures of the funds of individual emplo maintained, the portion of his money the employ

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he entitled to recover would be in the same proportion that the expenditures for political purposes which he had advised the union he disapproved bore to the total union budget.

The judgment is reversed and the case is remanded to the court below for proceedings not inconsistent with this opinion.

Reversed and remanded.

SUPREME COURT OF THE UNITED STATES

No. 4.—OCTOBER TERM, 1960.

International Association of
Machinists, et al., Appel-
lants,

On Appeal From the Su-
preme Court of Georgia.

v.
S. B. Street, et al.

[June 19, 1961.]

MR. JUSTICE DOUGLAS, concurring.

Some forced associations are inevitable in an industrial society. One who of necessity rides busses and street cars does not have the freedom that John Muir and Walt Whitman extolled. The very existence of a factory brings into being human colonies. Public housing in some areas may of necessity take the form of apartment buildings which to some may be as repulsive as ant hills. Yet people in teeming communities often have no other choice.

Legislatures have some leeway in dealing with the problems created by these modern phenomena.

Collective bargaining is a remedy for some of the problems created by modern factory conditions. The beneficiaries are all the members of the laboring force. We therefore concluded in *Railway Employees' Dept. v. Hanson*, 351 U. S. 225, that it was permissible for the legislature to require all who gain from collective bargaining to contribute to its cost.¹ That is the narrow and precise holding of the *Hanson* case, as MR. JUSTICE BLACK shows.

Once an association with others is compelled by the facts of life, special safeguards are necessary lest the

¹ The problem of employees who receive benefits of union representation but who are unwilling to give financial support to the union has received much attention by Congress (see S. Rep. No. 105, 80th Cong., 1st Sess., pp. 411-413; H. R. Rep. No. 510, 80th Cong., 1st Sess., pp. 546, 547) and by the courts. See *Radio Officers v. Labor Board*, 347 U. S. 17.

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spirit of the First, Fourth, and Fifth Amendments be lost and we all succumb to regimentation. I expressed this concern in *Public Utilities Comm'n v. Pollak*, 343 U. S. 451, 467 (dissenting opinion), where a "captive audience" was forced to listen to special-radio broadcasts. If an association is compelled, the individual should not be forced to surrender any matters of conscience, belief, or expression. He should be allowed to enter the group with his own flag flying, whether it be religious, political, or philosophical; nothing that the group does should deprive him of the privilege of preserving and expressing his agreement, disagreement, or dissent, whether it coincides with the view of the group, or conflicts with it in minor or major ways; and he should not be required to finance the promotion of causes with which he disagrees.

In a debate on the Universal Declaration of Human Rights, later adopted by the General Assembly of the United Nations on December 10, 1948, Mr. Malik of Lebanon stated what I think is the controlling principle in cases of the character now before us:

"The social group to which the individual belongs may, like the human person himself, be wrong or right: the person alone is the judge."²

This means that membership in a group cannot be conditioned on the individual's acceptance of the group's philosophy.³ Otherwise First Amendment rights are

² Commission on Human Rights, Summary Record of Fourteenth Meeting, February 4, 1947, U. N. Doc. E/CN.4/SR.14, p. 4.

³ We noted in the *Hanson* case, 351 U. S. 236-237, n. 8, various restrictions placed by union constitutions and by-laws on individual members. Some disqualified persons from membership for their political views or associations. Certainly government could not prescribe standards of that character.

Some restrained members from certain kinds of speech or activity. Certainly government could not impose these restraints.

Some required the use of portions of union funds for purposes other than collective bargaining. Plainly those conditions could not

required to be exchanged for the group's attitude, philosophy, or politics. I do not see how that is constitutionally permissible under the Constitution. Since neither Congress nor the state legislatures can abridge those rights, they cannot grant the power to private groups to abridge them. As I read the First Amendment it forbids any abridgment by government whether directly or indirectly.

The collection of dues for paying the costs of collective bargaining of which each member is a beneficiary is one thing. If, however, dues are used, or assessments are made, to promote or oppose birth control, to repeal or increase the taxes on cosmetics, to promote or oppose the admission of Red China into the United Nations, and the like, then the group compels an individual to support with his money causes beyond what gave rise to the need for group action.

I think the same must be said when union dues or assessments are used to elect a Governor, a Congressman, a Senator, or a President. It may be said that the election of a Franklin D. Roosevelt rather than a Calvin Coolidge might be the best possible way to serve the cause of collective bargaining. But even such a selective use of union funds for political purposes subordinates the individual's First Amendment rights to the views of the majority. I do not see how that can be done, even though the objector retains his rights to campaign, to speak, to vote as he chooses. For when union funds are used for that purpose, the individual is required to finance political projects against which he may be in rebellion.* The furtherance of the common cause leaves

be imposed by the state and federal government or enforced by the judicial branch of government. See *Shelley v. Kraemer*, 334 U. S. 1; *Barrows v. Jackson*, 346 U. S. 249.

* Hostility to such compulsion was expressed early in our history. Madison, in his Memorial and Remonstrance Against Religious Assessments, wrote, "Who does not see . . . that the same authority

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some leeway for the leadership of the group. As long as they act to promote the cause which justified bringing the group together, the individual cannot withdraw his financial support merely because he disagrees with the group's strategy. If that were allowed, we would be reversing the *Hanson* case, *sub silentio*. But since the funds here in issue are used for causes other than defraying the cost of collective bargaining, I would affirm the judgment below with modifications. Although I recognize the strength of the arguments advanced by my Brother BLACK and WHITTAKER against giving a "proportional" relief to appellees in this case, there is the practical problem of mustering five Justices for a judgment in this case. Cf. *Screws v. United States*, 325 U. S. 91, 134. So I have concluded *dubitante* to agree to the one suggested by MR. JUSTICE BRENNAN, on the understanding that all relief granted will be confined to the six protesting employees. This suit, though called a "class" action, does not meet the requirements as the use or nonuse of any dues or assessments depends on the choice of each individual, not the group. See *Hansberry v. Lee* 31 U. S. 32, 44.

which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?" *Writings of James Madison* (Hunt ed. 1901), p. 186.

Jefferson in his 1779 Bill for Religious Liberty wrote "that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical." See 1 *Hening's Stat.* 85; Brant, *Madison, The Nationalist* (1948), p. 35.

SUPREME COURT OF THE UNITED STATES

No. 4.—OCTOBER TERM, 1960.

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v.
S. B. Street, et al.

On Appeal From the Su-
preme Court of Georgia.

[June 19, 1961.]

MR. JUSTICE BLACK, dissenting.

This action was brought in a Georgia state court by six railroad employees¹ in behalf of themselves "and others similarly situated" against railroads making up the Southern Railway System, labor organizations representing employees of that system in collective bargaining, and a number of individuals, to enjoin enforcement and application to them of a union-shop agreement entered into between the railroads and the labor organizations as authorized by § 2, Eleventh of the Railway Labor Act.² The agreement's terms required all employees, in order to keep their railroad jobs, to join the union and remain members; at least to the extent of tendering periodic dues, initiation fees and assessments, not including fines and penalties.³ The complaint, as amended, charged that the

¹ Although, there were more complainants when the suit was brought, there were only six when the trial was completed.

² 64 Stat. 1238, 45 U. S. C. § 152, Eleventh.

³ In accordance with the requirements of the statute, the agreement provided, in language almost identical to that of the statute, that no employee would be required to become or remain a member of the union "if such membership is not available to such employee upon the same terms and conditions as are generally applicable to any other member, or if the membership of such employee is denied or terminated for any reason other than the failure of the employee to

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agreement was void because it conflicted with the la
Constitution of Georgia and the First, Fifth, Nin
Fourteenth Amendments to the Federal Consti
Section 2, Eleventh provides that such union sho
valid "[n]otwithstanding any other . . . statute or
the United States . . . or any State." Relying
decision in *Railway Employes' Dept. v. Hanso*
U. S. 225, which upheld contracts made pursuant
section, the Georgia trial court dismissed the com
as amended. The State Supreme Court reverse
remanded the case for trial, distinguishing our *A*
decision as follows:

"It is alleged that the union dues and other
ments they will be required to make to the
will be used to 'support ideological and politic
trines and candidates' which they are unwill
support and in which they do not believe, an
this will violate the First, Fifth and Ninth A
ments of the Constitution. While *Railway*
Dept. v. Hanson, 351 U. S. 225, supra, uph
validity of a closed shop contract executed und
Eleventh, that opinion clearly indicates tha
court would not approve a requirement that o
the union if his contributions thereto were u
this petition alleges. It is there said (headno
'Judgment is *reserved* [italics in Georgia Su
Court opinion] as to the validity or enforce
of a union or closed shop agreement if other
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exaction of dues, initiation fees or assessments
as a cover for forcing ideological conformity o
action in contravention of the First or the

tender the periodic dues, initiation fees, and assessments (not
ing fines and penalties) uniformly required as a condition of a
or retaining membership."

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Amendment.' We must render judgment now upon this precise question. We do not believe one can constitutionally be compelled to contribute money to support ideas, politics and candidates which he opposes"

On remand, testimony, admissions and stipulation showed without dispute that union funds collected from dues, fees and assessments, were regularly used to support and oppose various political and economic programs, candidates, parties and ideological causes, and that the complaining employees were opposed to many of the positions the unions took in these matters. The trial court made lengthy findings, one crucial here being:

"Those funds have been and are being used in substantial amounts to propagate political and economic doctrines, concepts and ideologies and to promote legislative programs opposed by plaintiffs and the class they represent."

The trial court then found and declared § 2, Eleventh Amendment, "unconstitutional to the extent that it permits, or applied to permit, the exaction of funds from plaintiffs and the class they represent for the complained of purposes and activities set forth above." Compulsory membership under these circumstances was held to abridge First Amendment freedoms of association, thought, speech, press and political expression.⁵ On the basis of this holding the trial court enjoined all the defendants "from enforcing the said union shop agreements . . . and from discharging petitioners, or any member of the

⁴ *Looper v. Georgia Southern & F. R. Co.*, 213 Ga. 279, 284, 9 S. E. 2d 101, 104-105.

⁵ The trial court also held that the section as enforced violated the Fifth, Ninth and Tenth Amendments. My view as to the First Amendment makes it unnecessary for me to consider the claims under the other Amendments.

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class they represent, for refusing to become members of, or pay periodic dues, fees, or assessments to any of the labor union defendants, provided, that said defendants may at any time petition the court to dissolve said injunction upon a showing that they no longer are engaging in the improper and unlawful activities described above." Again, the activities referred to were the use of union funds collected from fees, dues, and assessments to support candidates, parties, or ideological economic or political views contrary to the wishes of the complaining employees. The trial court also decreed that the three employees who had been compelled to protest to pay dues, fees and assessments by the union-shop agreement were entitled to have their payments returned.

The Supreme Court of Georgia affirmed, holding that "[o]ne who is compelled to contribute the fruits of his labor to support or promote political or economic programs or support candidates for public office is as much deprived of his freedom of speech as if he is compelled to give his vocal support to doctrines he opposes." ⁶ I fully agree with this holding of the Supreme Court and would affirm its judgment with certain modifications of the relief granted.

I.

Section 2, Eleventh of the Railway Labor Act authorizes unions and railroads to make union-shop agreements notwithstanding any other provision of state or federal law. Such a contract simply means that no person can keep a job with the contracting railroad unless he is a member of and pays dues to the contracting union. Neither § 2, Eleventh nor any other part of the Act contains any implication or even a hint that Congress

⁶ 215 Ga. 27, 46, 108 S. E. 2d 796, 808.

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to limit the purposes for which a contracting union should or could be spent. All the parties to this tion have agreed from its beginning, and still agree there is no such limitation in the Act. The Court nevertheless, in order to avoid constitutional questions, pretends the Act itself as barring use of dues for political purposes. In doing this I think the Court is once "carrying the doctrine of avoiding constitutional questions to a wholly unjustifiable extreme."⁷ In fact, I think the Court is actually rewriting § 2, Eleventh to make it exactly what Congress refused to make it mean. Every legislative history relied on by the Court appears to me to prove that its interpretation of § 2, Eleventh without justification. For that history shows that Congress with its eyes wide open passed that section, knowing that its broad language would permit the use of union dues to advocate causes, doctrines, laws, candidates and parties, whether individual members objected or not.⁸

⁷ *Clay v. Sun Insurance Office*, 363 U. S. 207, 213 (dissenting opinion).

⁸ The specific problem of use of the compelled dues for political purposes was raised during both the hearing and the floor debates. Hearings on S. 3295, Subcommittee of the Senate Committee on Labor and Public Welfare, 81st Cong., 2d Sess., pp. 316-317; Hearings on H. R. 7789, House Committee on Interstate and Foreign Commerce, 81st Cong., 2d Sess., p. 160; 96 Cong. Rec. 17049-17050.

Again, in 1958, when Senator Potter introduced his amendment to limit the use of compelled dues to collective bargaining and political purposes, he pointed out on the floor of the Senate that "the fact that under current practices in some of our labor organizations members are being denied the freedom not to support financially editorial or ideological or other activities which they may oppose." 104 Cong. Rec. 11214. It could hardly be contended that the defeat of his proposal, which was defeated, indicated any generally held belief that such use of compelled dues was already proscribed under § 2, Eleventh or any other existing statute. See 104 Cong. Rec. 11224, 11330-11347.

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such circumstances I think Congress has a determination of the constitutionality of the statute passed, rather than to have the Court rewrite it in the name of avoiding decision of constitutional questions.

The end result of what the Court is doing is to distort this statute so as to deprive unions of their right. I think Congress tried to give them and at the same time in the companion case of *Lathrop v. Donohoe* today, leave itself free later to hold that international associations can constitutionally exercise the right denied to labor unions for fear of unconstitutionality. The constitutional question raised alike in the two cases in *Lathrop* is bound to come back here soon with a case so meticulously perfect that the Court cannot avoid deciding it. Should the Court then hold that labor workers can constitutionally be compelled to support of views they are against, the result would be that the labor unions would have lost their case on a statutory-constitutional basis while the bar would win its case next year or the year after on the ground that the constitutional part of the bar's holding against the unions today was groundless. No one has suggested that the Court's statutory interpretation of § 2, Eleventh could possibly be supported without the crutch of its fear of unconstitutionality. Why I think the Court's avoidance of the constitutional issue in both cases today is wholly unfair to the unions as well as to Congress. I must consider this as the basis of my belief as to the constitutionality of the Eleventh, interpreted so as to authorize compulsion to pay dues to a union for use in advocating political candidates that the protesting unions are against.

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II.

It is contended by the unions that precisely the First Amendment question presented here was considered and decided in *Railway Employees' Dept. v. Hanson*, U. S. 225. I agree that it clearly was not. Section Eleventh was challenged there before it became effective and the main grounds of attack, as our opinion there stated, were that the union-shop agreement would deprive employees of their freedom of association under the First Amendment and of their property rights under the Fourteenth. There were not in the *Hanson* case, as there are here, any allegations, proof and findings that union funds were being used to support political parties, causes, and economic and ideological causes to which the complaining employees were hostile. Our opinion in *Hanson* carefully pointed to the fact that only general "unrelated problems" were tendered under the First Amendment and that imposition of "assessments . . . unrelated to collective bargaining" would present "a different problem." The Court went on further to emphasize that if at another time "the exaction of dues, initiation fees, or assessments is used as a cover for forcing ideological conformity or other action in contravention of the First Amendment, this judgment will not prejudice our decision in that case. . . . We only hold that the requirement for financial support of the collective-bargaining agency by all who receive the benefits of its work is within the power of Congress under the Commerce Clause and does not violate either the First or the Fourteenth Amendments." "

Thus the *Hanson* case held only that workers are not required to pay their part of the cost of actual bargaining.

⁹ 351 U. S., at 235, 236, 238. See also *id.*, at 242 (concurring opinion).

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carried on by a union selected as bargaining authority of Congress, just as Congress doubtless could have required workers to pay the cost of such a union had it chosen to have the bargaining carried on by the Secretary of Labor or any other appropriate government bargaining agent. The *Hanson* case did not hold that railroad workers could be compelled by law to join their constitutionally protected freedom of association in participating as union "members" against their will. That case cannot, therefore, properly be read as establishing a principle which would permit government to require, in the name of some public interest, be that interest real or imaginary—to compel membership in fraternal organizations, religious groups, or labor unions, or in commerce, bar associations, labor unions, or other private organizations. Government may decide to subsidize, support or control. In a word, the *Hanson* case did not hold that the existence of union-shop could be used as an excuse to force workers to join unions with people they do not want to associate with, or to use their money to support causes they detest.

III.

The First Amendment provides:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Probably no one would suggest that Congress could violate this Amendment, pass a law taxing the salaries of any persons for that matter (even lawyers) or fund to be used in helping certain political groups favored by the Government to elect candidates or promote their controversial causes.

v. STREET

ing agent under doubtless could such bargaining carried on by the rriately selected not hold that law to forego f association by inst their will. read to rest on ent—in further-interest actual Rotary Clubs, s, chambers of s, or any other decide it wants to the *Hanson* case -shop contracts ters to associate e with, or to pay t.

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INTERNATIONAL MACHINISTS v. STREET

a man by law to pay his money to elect candid advocate laws or doctrines he is against differs degree, if at all, from compelling him by law to s a candidate, a party, or a cause he is against. T reason for the First Amendment is to make the p this country free to think, speak, write and wor they wish, not as the Government commands.

There is, of course, no constitutional reason union or other private group may not spend its fu political or ideological causes if its members vol join it and can voluntarily get out of it.¹⁰ Labor made up of voluntary members free to get in or ou unions when they please have played important a ful roles in politics and economic affairs.¹¹ I spend its money is a question for each voluntar to decide for itself in the absence of some valid l bidding activities for which the money is spent. a different situation arises when a federal law s and authorizes such a group to carry on activitie expense of persons who do not choose to be men the group as well as those who do. Such a la though validly passed by Congress, cannot be us way that abridges the specifically defined freedom First Amendment. And whether there is such ment depends not only on how the law is written on how it works.¹²

¹⁰ See *DeMille v. American Federation of Radio Artists*, 851, 854 (Cal. Dist. Ct. App.), aff'd, 31 Cal. 2d 139, 147 P. 2d 769, 775-776, cert. denied, 333 U. S. 876.

¹¹ *United States v. C. I. O.*, 335 U. S. 106, 144 (concurring)

¹² See, e. g., *Giboney v. Empire Storage & Ice Co.*, 336 U.

¹³ We held in the *Hanson* case, with respect to this very Eleventh, that even though the statutory provision authoriz shops is only permissive, that provision, "which expressly that state law is superseded," is "the source of the power thority by which any private rights are lost or sacrific therefore is "the governmental action on which the Cor

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There can be no doubt that the federally sanctioned union-shop contract here, as it actually works, takes a part of the earnings of some men and turns it over to others, who spend a substantial part of the funds so received in efforts to thwart the political, economic and ideological hopes of those whose money has been forced from them under authority of law. This injects federal compulsion into the political and ideological processes, a result which I have supposed everyone would agree the First Amendment was particularly intended to prevent. And it makes no difference if, as is urged, political and legislative activities are helpful adjuncts of collective bargaining. Doubtless employers could make the same arguments in favor of compulsory contributions to an association of employers for use in political and economic programs calculated to help collective bargaining on their side. But the argument is equally unappealing whoever makes it. The stark fact is that this Act of Congress is being used as a means to exact money from these employees to help get votes to win elections for parties and candidates and to support doctrines they are against. If this is constitutional the First Amendment is not the charter of political and religious liberty its sponsors believed it to be. James Madison, who wrote the Amendment, said in arguing for religious liberty that "the same authority which can force a citizen to contribute three pence only of his property for the support of any one establishment, may force him to conform to any other establishment in

operates." 351 U. S., at 232. Even though § 2, Eleventh is permissive in form, Congress was fully aware when enacting it that the almost certain result would be the establishment of union shops throughout the railroad industry. Witness after witness so testified during the hearings on the bill, and this testimony was never seriously disputed. See Hearings on S. 3295, *supra*, note 8, *passim*; Hearings on H. R. 7789, *supra*, note 8, *passim*.

all cases whatsoever.”¹⁴ And Thomas Jefferson said that “to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical.”¹⁵ These views of Madison and Jefferson authentically represent the philosophy embodied in the safeguards of the First Amendment. That Amendment leaves the Federal Government no power whatever to compel one man to expend his energy, his time or his money to advance the fortunes of candidates he would like to see defeated or to urge ideologies and causes he believes would be hurtful to the country.

The Court holds that § 2, Eleventh denies “unions, over an employee’s objection, the power to use his exacted funds to support political causes which he opposes.” While I do not so construe § 2, Eleventh, I want to make clear that I believe the First Amendment bars use of dues extorted from an employee by law for the promotion of causes, doctrines and laws that unions generally favor to help the unions, as well as any other political purposes. I think workers have as much right to their own views about matters affecting unions as they have to views about other matters in the fields of politics and economics. Indeed, some of their most strongly held views are apt to be precisely on the subject of unions, just as questions of law reform, court procedure, selection of judges and other aspects of the “administration of justice” give rise to some of the deepest and most irreconcilable differences among lawyers. In my view, § 2, Eleventh can constitutionally authorize no more than to make a worker pay dues to a union for the sole purpose of defraying the cost of acting as his bargaining agent. Our Government has no more power to compel individuals to support union programs or union publications than it has to compel the support of political programs, employer

¹⁴ 1 Stokes, Church and State in the United States 391 (1950).

¹⁵ Brant, James Madison: the Nationalist 354 (1948).

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programs or church programs. And the First Amendment, fairly construed, deprives the Government of all power to make any person pay out one single penny against his will to be used in any way to advocate doctrines or views he is against, whether economic, scientific, political, religious or any other.¹⁶

I would therefore hold that § 2, Eleventh of the Railway Labor Act, in authorizing application of the union-shop contract to the named protesting employees who are appellees here, violates the freedom of speech guarantee of the First Amendment.

IV.

The remedy:

The Georgia court enjoined the unions and the railroads from certain future activities under the contract and also required repayment of dues paid by three employees who had protested use of union funds to support candidates or advocate views the protesting employees were against.

I am not so sure as the Court that the injunction bars "the collection of all funds from anyone who can show that he is opposed to the expenditure of any of his money for political purposes which he disapproves." So construed the injunction would take away the First Amendment right of employees to contribute their money voluntarily to a collective fund to be used to support and oppose candidates and causes even though individual contributors might disagree with particular choices of the group. So far as it may be ambiguous in this respect, I think the injunction should be modified to make sure that it does not interfere with the valuable rights of citizens to make their individual voices heard through voluntary collective action.

¹⁶ Cf. *Everson v. Board of Education*, 330 U. S. 1, 16.

For much the same basic reasons I think the injunction is too broad in that it runs not only in favor of the six protesting employees but also in favor of the "class they represent." No one of that "class" is shown to have protested at all. The State Supreme Court nevertheless rejected the unions' contention that the so-called class was so indefinite, and its members so lacking in common, identifiable interests and mental attitudes, that a decree purporting to bind all of them, the railroads, the individual defendants and the unions, would not comport with the due process requirements of the Fifth and Fourteenth Amendments. For reasons to be stated, I agree with this contention of the unions and consequently would hold that the judgment here cannot stand insofar as it purports finally to adjudicate rights as between the party defendants and railroad employees who were neither named party plaintiffs nor intervenors in the suit.

The trial court defined the "class" as composed of "all non-operating employees of the railroad defendants affected by, and opposed to, the . . . union shop agreements, who also are opposed to the collection and use of periodic dues, fees and assessments for support of ideological and political doctrines and candidates and legislative programs . . ." ¹⁷ As applied to the facts here, this class, as defined, could include employees not only

¹⁷ The trial court went on to include in the class other employees who opposed the use of union funds for any purposes "other than the negotiation, maintenance and administration of agreements concerning rates of pay, rules and working conditions, or wages, hours, terms, or other conditions of employment or the handling of disputes relating to the above." I read the two opinions of the Georgia Supreme Court, however, as limiting its holding to the precise question of whether the First Amendment is violated by the compulsory legal requirement that employees pay dues and other fees which are partly used to propagate political and ideological views obnoxious to the employees. I consequently do not reach or consider the different question lurking in this part of the trial court's definition of class.

from Georgia, but also from Florida, Alabama, North Carolina, South Carolina, Tennessee, Louisiana, Illinois, Virginia, Ohio, Indiana, Missouri, Mississippi, Kentucky and the District of Columbia. Genuine class actions result in binding judgments either for or against each member of the class.¹⁸ Obviously, to make a judgment binding, the parties for or against whom it is to operate must be identifiable when the judgment is rendered. That would not be possible here since the only employees included in the class would be those who personally oppose the views they allege the union is using their dues to promote. This would make the "class" depend on the views entertained by each member, views which may change from day to day or year to year. Under these circumstances, when this decree was rendered neither the court nor the adverse parties nor anyone else could know with certainty, to what individuals the unions owed a duty under the decree. In *Hansberry v. Lee*, 311 U. S. 32, 44, this Court pointed out the insuperable obstacles in attempting to treat as members of the same class parties to a contract such as the one here, some of whom might prefer to have the contract enforced and some of whom might not. Notice to persons whose rights are to be adjudicated is too important an element of our system of justice to permit a holding that this Georgia action has finally determined the issues for all the unidentified members of this "class" of plaintiffs spread territorially all the way from Florida to Illinois and from the District of Columbia to Missouri. After all the class suit doctrine is only a narrow judicially created exception to the rule that a case or controversy involves litigants who have been duly notified and given an opportunity to be

¹⁸ See, e. g., *Supreme Tribe of Ben-Hur v. Cauble*, 255 U. S. 356, 367.

present in court either in person or by counsel.¹⁹ I would hold that there was no known common interest among the members of the described class here which justified this class action. From the very nature of the rights asserted, which depended on the unknown, perhaps fluctuating mental attitudes of employees, the rights of each employee were the basis for separable claims, in which the relief for each might vary as it did here as to the amount of damages awarded. Under these circumstances the class judgment should not stand.

The decree, modified to eliminate its class aspect, does not unconditionally forbid the application of the contract to all people under all circumstances, as did the one we struck down in the *Hanson* case. The decree so modified would simply forbid use of the union-shop contract to bar employment of the six protesting employees so long as the unions do not discontinue the practice of spending union funds to support any causes or doctrines, political, economic or other, over the expressed objection of the six particular employees. Other employees who have not protested are of course in the entirely different position of voluntary or acquiescing dues payers, which they have every right to be, and since they have asked for no relief the decree in this case should not affect them. Thus modified I think the relief afforded by the decree is justified.

The decree requires the union to refund dues, fees and assessments paid under protest by three of the complaining employees and exempts the six complaining employees from the payment of any union dues, fees or assessments so long as funds so received are used by the union to promote causes they are against. The state court found that these payments had been and would be made by these employees only because they had been compelled to join

¹⁹ Cf. *Hansberry v. Lee*, 311 U. S., at 41-42.

the union to save their jobs, despite their objection to paying the union so long as it used its funds for certain parties and ideologies contrary to these employees' views. The Court does not challenge this finding but nevertheless holds that relieving protesting workers of all part of dues would somehow interfere with the union's statutory duty to act as a bargaining agent. In the first instance this would interfere with the union's activities to the extent that it bars compulsion of dues payment on protesting workers to be used in some unknown political or unconstitutional purposes, and I think it perfectly proper to hold that such payments cannot be compelled. Furthermore, I think the remedy suggested by the Court would work a far greater interference with the union's bargaining activities because it will impose much greater administrative and accounting burdens on both unions and workers. The Court's remedy is to give the wronged employee the right to a refund limited either to "the proportion of the union's total expenditures made for such political activities" or to the "proportion . . . [of] expenditures for political purposes which he had advised the union to approve." It may be that courts and lawyers with sufficient skill in accounting, algebra, geometry, trigonometry and calculus will be able to extract the proper microscopic answer from the voluminous and complex accounting records of the local, national and international unions involved. It seems to me, however, that while the Court's remedy may prove very lucrative to specialists, accountants and lawyers, this formula, with its attendant trial burdens, promises little hope for first-class recompense to the individual workers whose First Amendment freedoms have been flagrantly violated. Undoubtedly, at the conclusion of this long exploration of accounting intricacies, many courts could with plausibility credit the workers' claims as *de minimis* when measured in dollars and cents.

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I cannot agree to treat so lightly the value of a man's constitutional right to be wholly free from any sort of governmental compulsion in the expression of opinions. It should not be forgotten that many men have left their native lands, languished in prison, and even lost their lives, rather than give support to ideas they were conscientiously against. The three workers who paid under protest here were forced under authority of a federal statute to pay *all* current dues or lose their jobs. They should get back *all* they paid with interest.

Unions composed of a voluntary membership, like all other voluntary groups, should be free in this country to fight in the public forum to advance their own causes, to promote their choice of candidates and parties and to work for the doctrines or the laws they favor. But to the extent that Government steps in to force people to help espouse the particular causes of a group, that group—whether composed of railroad workers or lawyers—loses its status as a voluntary group. The reason our Constitution endowed individuals with freedom to think and speak and advocate was to free people from the blighting effect of either a partial or a complete governmental monopoly of ideas. Labor unions have been peculiar beneficiaries of that salutary constitutional principle, and lawyers, I think, are charged with a peculiar responsibility to preserve and protect this principle of constitutional freedom, even for themselves. A violation of it, however small, is, in my judgment, prohibited by the First Amendment and should be stopped dead in its tracks on its first appearance. With so vital a principle at stake, I cannot agree to the imposition of parsimonious limitations on the kind of decree the courts below can fashion in their efforts to afford effective protection to these priceless constitutional rights.

I would affirm the judgment of the Georgia Supreme Court, with the modifications I have suggested.

SUPREME COURT OF THE UNITED STATES

No. 4.—OCTOBER TERM, 1960.

International Association of
Machinists, et al., Appel-
lants,

v.

S. B. Street, et al.

On Appeal From the
preme Court of Georgia

[June 19, 1961.]

MR. JUSTICE FRANKFURTER, whom MR. JUSTICE
LAN joins, dissenting.

Appellant unions were the collective bargaining representatives of the "non-operating" employees of Southern Railway. Appellees, six individual rail employees, commenced this action in the Superior Court of Bibb County, Georgia, seeking a declaration of invalidity and an injunction to prevent enforcement of a union shop agreement, made under the authority of § 2, Eleventh of the Railway Labor Act, as amended in 1951, on the ground that the contract was in violation of Georgia law and rights secured by the First, Fifth, Ninth and Tenth Amendments of the United States Constitution. The suit was brought as a class action on behalf of "all those employees or former employees of the railroad who are defendants affected by and opposed to the union shop agreement who are also opposed to the use of the periodic dues, fees and assessments which they have been, and will be required to pay to support ideological and political doctrines and candidates and legislative programs. . . ." The monthly dues ranged from \$2.25 to \$3. The petition alleged that the plaintiffs opposed the contract because they were unwilling voluntarily to support the "ideological and political doctrines and candidates" for which union dues and assessments were collected under the union shop agreement.

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shop agreement and would be used "in part . . . to support."

The Georgia trial court's decision dismissing the complaint for failure to state a cause of action was affirmed by the Supreme Court of Georgia. 213 Ga. 201, 50 S.E.2d 101. Upon remand, the parties stipulated to the truth of the allegations, and the plaintiffs offered proof of the use of union funds which went to the legislative, executive and educational departments of the unions and to the controlling organs of the AFL-CIO. The trial court made, *inter alia*, the following findings: the unions had expended in "substantial amounts" to promote their political doctrines and legislative programs which the plaintiffs opposed; these funds had been used in "substantial amounts to impose upon plaintiffs the conformity to those doctrines"; such use of funds was not reasonably necessary to collective bargaining and to maintaining the existence and position of said unions as effective bargaining agents." The need of the unions to engage in what are loosely described as political activities as means of promoting—if not to achieving—the very purposes of their existence, the extent to which this use has become an essential part of the American labor movement and more particularly of railroad labor movement, the relation of these means to the ends of collective bargaining, were matters not canvassed at trial nor were they noticed. Nor was it claimed that the slightest restriction had been interposed against the fullest exercise by the plaintiffs of their freedom of speech in any form or in any forum. Since these matters were not canvassed, no findings were made upon them.

The trial court permanently enjoined enforcement of the agreement so long as the unions continued to engage in "in the improper and unlawful activities described in the declared § 2, Eleventh of the Railway Labor Act," unconstitutional insofar as it permitted the exacting

v. STREET.

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INTERNATIONAL MACHINISTS v. STREET

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unions were also ordered to repay the dues and

ments previously paid by the individual plaintiffs

Georgia Supreme Court affirmed this judgment, 2

27, 108 S. E. 2d 796, and on appeal to this Court

28 U. S. C. § 1257 (1), probable jurisdiction was

361 U. S. 807.

I completely defer to the guiding principle that

Court will abstain from entertaining a serious con-

stitutional question: when a statute may fairly be con-

so as to avoid the issue, but am unable to accept

restrictive interpretation that the Court gives

Eleventh of the Railway Labor Act. After

the relevant canon for constitutional adjudication

United States v. Jin Fuey Moy, 241 U. S. 39.

Mr. Justice Cardozo for the whole Court enuncia-

complementary principle:

"But avoidance of a difficulty will not be pre-

the point of disingenuous evasion. Here the

tion of the Congress is revealed too distinct

permit us to ignore it because of mere mis-

as to power. The problem must be fairly

answered." *Moore Ice Cream Co. v. Rose*, 29

373, 379.

The Court-devised precept against avoidable conflict

Congress through unnecessary constitutional adjudication

is not a requirement to distort an enactment in

to escape such adjudication. Respect for the demands

and only permits that we extract an interpretation

which shies off constitutional controversy pro-

¹"A statute must be construed, if fairly possible, so as to avoid only the conclusion that it is unconstitutional but also grave upon that score."

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such interpretation is consonant with a fair statute.

And so the question before us is whether of the Railway Labor Act can untorturing bar activities of railway unions, which have accordance with federal law for a union sh they are forbidden to spend union dues for p have uniformly and extensively been so long to have become commonplace, settled, conventional union practices. No consideration relevant tion sustains such a restrictive reading.

The statutory provision cannot be meanstrued except against the background and p of what is loosely called political activity trade unions in general and railroad unions in activity indissolubly relating to the immedi and social concerns that are the *raison d'être*. It would be pedantic heavily to document truth of industrial history and commonpl union life. To write the history of the the United Mineworkers, the Steel Worker gamated Clothingworkers, the International ment Workers, the United Auto Workers, a their so-called political activities and exp them, would be sheer mutilation. Suffice few illustrative manifestations. The AFI conservative labor group, sponsored as earl extensive program of political demands cal pulsory education, an eight-hour day, empl bility, and other social reforms.² The fierc Adamson Law of 1916, see *Wilson v. Ne* 332, was a direct result of railway uni exerted upon both the Congress and the

² Taft, *The A. F. of L. in the Time of Gompers*,

³ Perlman and Taft, *History of Labor in the United States*, 1932, pp. 380-385.

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More specifically, the weekly publication "Labor" expenditure under attack in this case—has since 1911 been the organ of the railroad brotherhoods which financed it. Its files through the years show its preoccupation with legislative measures that touch the vitals of labor's interests and with the men and parties who effectuate them. This aspect—call it the political side—is as organic, as inseparable a part of the philosophy and practice of railway unionism as their immediate bread-and-butter concerns.

Viewed in this light, there is a total absence in the legislative context, the history and the purpose of the legislation under review of any indication that Congress, in authorizing union-shop agreements, attributed to unions any restricted them to an artificial, non-prevalent scope of activities in the expenditure of their funds. An inference that Congress legislated regarding expenditure of union funds in contradiction to prevailing practices ought to be based on a foundation founded than on complete silence. The aim of the legislation, clearly stated in the congressional record, was to eliminate "free riders" in the industry "—to make possible "the sharing of the burden of maintenance of the property of all the beneficiaries of union activity." To suggest that this language covertly meant to encompass any less than the maintenance of those activities normally engaged in by unions is to withdraw life from law and to say that Congress dealt with artificialities and not with reality. Unions as they were and as they functioned.

The debates and hearings lend not the slightest support to a construction of the amendment which would restrict the uses to which union funds had, at the time of the union-shop amendment, been conventionally put. Of course, the legislative record does not spell out the obvious. The absence of any showing of concern about union

⁴ S. Rep. No. 2262, 81st Cong., 2d Sess. 2-3.

⁵ Remarks of Mr. Harrison, Hearings, House Committee on Interstate and Foreign Commerce, 81st Cong., 2d Sess., p. 253.

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penditures in "political" areas—especially when the issue was briefly raised⁶—only buttresses the conclusion that Congress intended to leave unions free to do that which unions had been and were doing. It is surely fanciful to conclude that this verbal vacuity implies that Congress meant its amendment to be read as providing that members of the union may restrict their dues solely for financing the technical process of collective bargaining.

There were specific safeguards protective of minority rights. These safeguards were directed solely toward the protection of those who might otherwise find themselves barred from union membership—viz., Negroes and those who had been long-time opponents of the unions. The only reference to free speech in the record of the enactment was made by the President of the Norfolk & Western Railroad Company during the hearings before the House Subcommittee. His remarks were related to restrictive provisions in some union constitutions which suppressed the right of a dissatisfied member to voice his criticism upon pain of expulsion. No such claim is remotely before us.⁷ The sole reason for clarifying the proviso to the amendment so that payment of dues was explicitly declared to be the only legitimate condition of union membership was the continuing fear of lack of protection for unpopular minorities. There is no mention of political expenditures in any of the references. From this wasteland of material it is strange to find not only that "A congressional concern over possible impinge-

⁶ 96 Cong. Rec. 17049-17050; Hearings, Subcommittee of the Senate Committee on Labor and Public Welfare on S. 3295, 81st Cong., 2d Sess., pp. 173-174.

⁷ Remarks of Mr. Smith, Hearings, House Committee on Interstate and Foreign Commerce, 81st Cong., 2d Sess., pp. 115-116.

⁸ Compare *Railway Employees' Dept. v. Hanson*, 351 U. S. 225, 236-237, n. 8.

ments on the interests of individual dissenters from union policies is therefore discernible," but so discernible that a construction must be placed upon the statute that neither its terms nor the accustomed habits of union life remotely justify.

None of the parties in interest at any time suggested the possibility that the statute be construed in the manner now suggested. Neither the United States, the individual dissident members, the railroad unions, the railroads, the AFL-CIO, the Railway Labor Executives' Association, nor any other *amici curiae*, not one suggested that the statute could be emasculated in the manner now proposed. Of course we are not confined by the absence of such a claim, but it is significant that a construction now found to be reasonable never occurred to the litigants in the two arguments here.

I cannot attribute to Congress that *sub silentio* it meant to bar railway unions under union-shop agreement from expending their funds in their traditional manner. How easy it would have been to give at least a hint that such was its purpose. The claim that these expenditures infringe the appellees' constitutional rights under the First Amendment must therefore be faced.

In *Railway Employees' Dept. v. Hanson*, 351 U. S. 225, this Court had to pass on the validity of § 2, Eleventh of the Railway Labor Act, which provided that union-shop agreements entered into between a carrier and a duly designated labor organization shall be valid notwithstanding any other "statute or law of the United States, or Territory thereof, or of any State."⁹ We held that in

⁹ The pertinent portion of the section follows:

"Notwithstanding any other provisions of this chapter, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this chapter and a labor organization or labor organizations duly designated and

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its exercise of the power to regulate commerce, "the choice by the Congress of the union shop as a stabilizing force [in industrial disputes] seems to us to be an allowable one," and that the plaintiffs' claims under the First and Fifth Amendments were without merit.

The record before the Court in *Hanson* clearly indicated that dues would be used to further what are normally described as political and legislative ends. And it surely can be said that the Court was not ignorant of a fact that everyone else knew. Union constitutions were in evidence which authorized the use of union funds for political magazines, for support of lobbying groups, and for urging union members to vote for union-approved candidates.¹⁰ The contention now raised by plaintiffs was succinctly stated by the *Hanson* plaintiffs in their brief.¹¹ We indicated that we were deciding the merits of the complaint on all the allegations and proof before us. "On the present record, there is no more an infringe-

authorized to represent employees in accordance with the requirements of this chapter shall be permitted—

"(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: *Provided*, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership." 64 Stat. 1238, 45 U. S. C. § 152, Eleventh.

¹⁰ See the provisions of the constitutions of the Brotherhood of Maintenance of Way Employees, the Brotherhood of Railway Carmen of America, and the International Association of Machinists before the Court in the *Hanson* record, pp. 103-143.

¹¹ Appellee's brief, pp. 16-17, 65.

ment or impairment of First Amendment rights than there would be in the case of a lawyer who by state law is required to be a member of an integrated bar." 351 U. S., at 238.

One would suppose that *Hanson's* reasoning disposed of the present suit. The Georgia Supreme Court, however, in reversing the initial dismissal of the action by the lower court, relied upon the following reservation in our opinion: "If the exaction of dues, initiation fees, or assessments is used as a cover for forcing ideological conformity or other action in contravention of the First Amendment, this judgment will not prejudice the decision in that case." 351 U. S., at 238. The use of union dues to promote relevant and effective means of realizing the purposes for which unions exist does not constitute a utilization of dues "as a cover for forcing ideological conformity" in any fair reading of those words. It will come as startling and fanciful news to the railroad unions and the whole labor movement that in using union funds for promoting and opposing legislative measures of concern to their members they were engaged in under-cover operations. "Cover" implies a disguise, some sham; "forcing . . . conformity" means coercing avowal of a belief not entertained. Plaintiffs here are in no way subjected to such suppression of their true beliefs or sponsorship of views they do not hold. Nor are they forced to join a sham organization which does not participate in collective bargaining functions, but only serves as a conduit of funds for ideological propaganda. A totally different problem than the one before the Court would be presented by provisions of union constitutions which in fact prohibited members from sponsoring views which the union opposed,¹² or which enabled officers to sponsor views not representative of the union.

¹² "B. The Grand Lodge Constitution of the Brotherhood Railway Carmen of America prohibits members from 'interfering with

Nevertheless, we unanimously held that the plaintiff in *Hanson* had not been denied any right protected by the First Amendment. Despite our holding, the gist of the complaint here is that the expenditure of a portion of mandatory funds for political objectives, denies freedom of speech—the right to speak or to remain silent—to members who oppose, against the constituted authority of the union desires, this use of their union dues. No one's desire or power to speak his mind is checked or curbed. The individual member may express his views in any public or private forum as freely as he could before the union collected his dues. Federal taxes also may diminish the vigor with which a citizen can give partisan support to a political belief, but as yet no one would place such an impediment to making one's views effective within the reach of constitutionally protected "free speech."

This is too fine-spun a claim for constitutional recognition. The framers of the Bill of Rights lived in an era when overhanging threats to conduct deemed "seditious" and *lettres de cachet* were current issues. The concern was in protecting the right of the individual to freely to express himself—especially his political beliefs—in a public forum, untrammelled by fear of punishment or of governmental censure.

But were we to assume, *arguendo*, that the plaintiffs have alleged a valid constitutional objection if Congress had specifically ordered the result, we must consider the difference between such compulsion and the absence of compulsion when Congress acts as platonic ally as it did, in a wholly non-coercive way. Congress has not commanded that the railroads shall employ only those workers who are members of authorized unions.

legislative matters affecting national, state, territorial, or provincial legislation, adversely affecting the interests of our members § 64." 351 U. S., at 237, n. 8.

Congress has only given leave to a bargaining representative, democratically elected by a majority of workers, to enter into a particular contractual provision arrived at under the give-and-take of duly safeguarded bargaining procedures. (The statute forbids distortion of these procedures as, for instance, through racial discrimination. *Steele v. Louisville & Nashville R. Co.*, 323 U. S. 192.) Congress itself emphasized this vital distinction between authorization and compulsion. S. Rep. No. 2262, 81st Cong., 2d Sess. 2. And this Court in *Hanson* noted that "The union shop provision of the Railway Labor Act is only permissive. Congress has not . . . required carriers and employees to enter into union shop agreements." 351 U. S., at 231. When we speak of the Government "acting" in permitting the union shop, the scope and force of what Congress has done must be heeded. There is not a trace of compulsion involved—no exercise of restriction by Congress on the freedom of the carriers and unions. On the contrary, Congress expanded their freedom of action. Congress lifted limitations upon free action by parties bargaining at arms length.¹³

¹³ To ignore this distinction would be to go far beyond the severely criticized, indeed rather discredited, case of *United States v. Butler*, 297 U. S. 1, which found coercive implications in the processing tax of the Agricultural Adjustment Act. The dissenting views of Mr. Justice Stone, concurred in by Brandeis and Cardozo, JJ., may surely be said to have won the day: "Although the farmer is placed under no legal compulsion to reduce acreage, it is said that the mere offer of compensation for so doing is a species of economic coercion which operates with the same legal force and effect as though the curtailment were made mandatory by Act of Congress." 297 U. S., at 81.

For an analysis of the 1951 Amendment leading to a narrow scope of its constitutional implications, see Wellington, *The Constitution, the Labor Union, and "Governmental Action,"* 70 Yale L. J. 345, 352-360, 363-371.

The plaintiffs have not been deprived of the participate in determining union policies or to as respective weight in defining the purposes for wh dues may be expended. Responsive to the act our industrial society, in which unions as such role that they do, the law regards a union as a tained, legal personality exercising rights and s responsibilities wholly distinct from its individu bers. See *United Mine Workers of America v. Coal Co.*, 259 U. S. 344. It is a commonpla organizations that a minority of a legally re group may at times see an organization's fu for promotion of ideas opposed by the minor analogies are numerous. On the largest scale, eral Government expends revenue collected fr vidual taxpayers to propagandize ideas which m payers oppose. Or, as this Court noted in *Hans* state laws compel membership in the integrat a prerequisite to practicing law,¹⁴ and the bar as

¹⁴ The following States have integrated bars: Alabama (Tit. 46, § 30); Alaska (Alaska Laws Ann. § 35-2-77); (Ariz. Code Ann. § 32-302); California (Cal. Bus. & § 6002); Florida (Fla. Stat. Ann., Vol. 31, pp. 699-713 (co Idaho (Idaho Code § 3-408 to 3-417); Kentucky (Ky. § 30.170); Louisiana (La. Rev. Stat. 37:211; La. Supr Rule XXI); Michigan (Mich. Stat. Ann. § 27-101); (Miss. Code § 8696); Missouri (Mo. Supreme Court R Mo. xxxi); Nebraska (Neb. Supreme Court Rule IV, 283, 275 N. W. 265); Nevada (Nev. Rev. Stat. 7.270-7. Mexico (N. Mex. Stat. Ann. § 18-1-2 to 18-1-24); North (N. C. Gen. Stat. § 84-16); North Dakota (N. D. § 27-1202); Oklahoma (*In re Integration of the Bar of* 185 Okla. 505, 95 P. 2d 113, amended by Okla. Supreme approved October 6, 1958); Oregon (Ore. Rev. Stat. 9.0 South Dakota (S. D. Code 32.1114); Texas (Vern. Civ. 320a-1, § 3); Utah (Utah Code Ann. 78-51-1 to 78-51-25 (Va Code 54-49); Washington (Wash. Rev. Code 2.48.0

uses its funds to urge legislation of which individual members often disapprove. The present case is, as the Court in *Hanson* asserted, indistinguishable from the issues raised by those who find constitutional difficulty with the integrated bar.¹⁵ If our statement in *Hanson* carried any meaning, it was an unqualified recognition that legislation providing for an integrated bar, exercising familiar functions, is subject to no infirmity deriving from the First Amendment. Again, under the Securities Exchange Act, Congress specifically authorized the formation of "national securities associations," membership in which is of practical necessity to many brokers and dealers.¹⁶ The Association has urged the passage

Virginia (W. Va. Code Ann. 51-1-4a); Wisconsin (Wis. Stat. 256.5 Wis. 2d 618, 627, 93 N. W. 2d 601, 605); Wyoming (Wyo. Stat. 5-22; Wyo. Supreme Court Rules for State Bar, Rule 5).

¹⁵ So far as reported, all decisions have upheld the integrated bar against constitutional attack. *Carpenter v. State Bar of California*, 211 Cal. 358, 295 P. 23; *Herron v. State Bar of California*, 24 Cal. 2d 53, 147 P. 2d 543; *Petition of Florida State Bar Assn.*, 40 So. 2d 902; *In re Mundy*, 202 La. 41, 11 So. 2d 398; *Ayres v. Hadaway*, 303 Mich. 589, 6 N. W. 2d 905; *In re Scott*, 53 Nev. 24, 292 P. 2d 104; *In re Platz*, 60 Nev. 24, 108 P. 2d 858; *In re Gibson*, 35 N. Mex. 54 P. 2d 643; *Kelley v. State Bar of Oklahoma*, 148 Okla. 282, 29 P. 623; *Lathrop v. Donohue*, 10 Wis. 2d 230.

¹⁶ The Maloney Act of 1938 added § 15A to the Securities Exchange Act of 1934. 52 Stat. 1070, 15 U. S. C. § 78o-3. In order to be registered, a number of statutory standards must be met. The statute specifically requires that an association's rules provide for democratic representation of the membership, and that dues be equitably allocated. See § 15A (b)(5), (6). Only one association, the National Association of Securities Dealers, Inc., has ever applied for or been granted registration. NASD membership comprises roughly three-quarters of all brokers and dealers registered with the Securities Exchange Commission. Loss, Securities Regulation 766-1 (1951, Supp. 1955). Section 15A (i), (n) of the Act authorize the NASD to formulate rules which stipulate that members shall refrain

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analytical fragmentation may be called political
ities. The 1951 Amendment of the Railway Labor
which enacted § 2, Eleventh, was passed in an effort
to make more equitable the sharing of costs of collective
bargaining among all the workers whom the bargaining
agent represented. H. R. Rep. No. 2811, 81st
2d Sess. 4; Hearings, House Committee on Interstate
Foreign Commerce on H. R. 7789, 81st Cong., 2d
Sess. 10, 11, 29, 49-50; Hearings, Subcommittee of the
Committee on Labor and Public Welfare on S. 329,
81st Cong., 2d Sess. 15-16, 130, 154, 170. Prior to the
passage of this Amendment, there was no way in which the
carrier could compel non-union members in the bargaining
unit to contribute to the expenses incurred in seeking
contractual provisions from the carrier that would result
to the advantage of all its employees. The main reason
why prior law had forbidden union shops in the railway
industry is stated in the Senate Report to the
Amendment:

"The present prohibitions against all forms of
union security agreements and the check-off system
made part of the Railway Labor Act in 1934.
These provisions were enacted into law against the background
of employer use of these agreements as devices for
establishing and maintaining company unions, thereby
effectively depriving a substantial number of employees
of their right to bargain collectively. It is estimated
that in 1934 there were over 700 agreements between
the carriers and unions alleged to be company unions.
These agreements represented over 20 per cent of the
total number of agreements in the industry.

"It was because of this situation that labor organizations
agreed to the present statutory prohibitions
against union security agreements. An effort was
made to limit the prohibition to company unions.
This, however, proved unsuccessful; and in order

reach the problem of company control. Labor organizations accepted the prohibitions which also deprived the unions of seeking union security check-off provisions. . . .

"Since the enactment of the National Labor Relations Act, company unions have practically disappeared. S. Rep. No. 2262, 81st Cong., 2d Sess. 1909; H. R. Rep. No. 2811, 81st Cong., 2d Sess. 1909.

Nothing was further from congressional intent to be concerned with restrictions upon free speech. Its purpose was to eliminate the bargaining unit. Inroads on freedom were remotely involved in the legislative process in nobody's mind. Congress legislated to find and remove abuses in the domain of private peace. This Court would stray beyond its duty to erect a far-fetched claim, derived from a relation between an obviously valid aim and an abstract conception of freedom, in order to reach the right.

For us to hold that these defendants should expend their moneys for political and labor would be completely to ignore the long history of conduct and its pervasive acceptance in American labor's initial role in shaping the labor back 130 years.²⁰ With the coming of labor on a national scale was committed to a class party but to maintain a program in furtherance of its industrial standard. The unions were supporting members of the

²⁰ 1 Commons, History of Labor in the United States (1935).

²¹ Taft, The A. F. of L. in the Time of Gompers; Bakke and Kerr, Unions, Management and the

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mons as early as 1867.²² The Canadian Trades C
in 1894 debated whether political action should
main objective of the labor force.²³ And in a
Australian case, the High Court upheld the rig
union to expel a member who refused to pay a
levy.²⁴ That Britain, Canada and Australia h
explicit First Amendment is beside the point.
thing, the freedoms safeguarded in terms in th
Amendment are deeply rooted and respected in the
tradition, and are part of legal presuppositions in
and Australia. And in relation to our immedia
cern, the British Commonwealth experience est
the pertinence of political means for realizing bas
union interests.

The expenditures revealed by the AFL-CIO Ex
Council Reports emphasize that labor's particip
urging legislation and candidacies is a major one.
last three fiscal years, the Committee on Political
tion (COPE) expended a total of \$1,681,990.
AFL-CIO News cost \$756,591.99; the Legislative
ment reported total expenses of \$741,918.24.²⁵
Georgia trial court has found that these func
not reasonably related to the unions' role as
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of law. It is a baseless dogmatic assertion that flie
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tures and an exhibit of labor publications. The

²² 3.Cole, A Short History of the British Working Class M
56 (2d ed. 1937).

²³ Logan, Trade Unions in Canada, 59-60 (1948).

²⁴ *William v. Hursey*, 33 A. L. J. R. 269 (1959).

²⁵ These are the totals of the figures for 1957, 1958, a
reported in Proceedings of the AFL-CIO Constitutional Co
Vol. II, pp. 17-19 (1959) and *id.*, pp. 17-19 (1957).

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of the Adamson Act²⁶ in 1916, establishing the eight-hour day for the railroad industry, affords positive proof that labor may achieve its desired result through legislation after bargaining techniques fail. See *Wilson v. New*, *supra*, at 340-343. If higher wages and shorter hours are prime ends of a union in bargaining collectively, these goals may often be more effectively achieved by lobbying and the support of sympathetic candidates. In 1960 there were at least eighteen railway labor organizations registered as congressional lobby groups.²⁷

When one runs down the detailed list of national and international problems on which the AFL-CIO speaks, it seems rather naive for a court to conclude—as did the trial court—that the union expenditures were “not reasonably necessary to collective bargaining or to maintaining the existence and position of said union defendants as effective bargaining agents.” The notion that economic and political concerns are separable is pre-Victorian. Presidents of the United States and Committees of Congress invite views of labor on matters not immediately concerned with wages, hours, and conditions of employment.²⁸ And this Court accepts briefs as *amici* from the AFL-CIO on issues that cannot be called industrial, in any circumscribed sense. It is not true in life that political protection is irrelevant to, and insulated from, economic interests. It is not true for industry or finance.²⁹ Neither is it true for labor. It dis-

²⁶ 39 Stat. 721, 45 U. S. C. §§ 65-66.

²⁷ Letters from Clerk of House of Representatives to Supreme Court Librarian, May 5, 1960; May 10, 1961.

²⁸ For a recent example, see the statement of Stanley H. Ruttenberg, Director of Research for the AFL-CIO, on pending tax legislation before the House Ways and Means Committee, reported in part in the *New York Times*, May 12, 1961, p. 14, col. 3.

²⁹ A contested question in the corporate field is the legitimacy of corporate charitable contributions. This presents a not dissimilar problem whether the Government may authorize an organization to

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respects the wise, hardheaded men who were the authors of our Constitutions and our Bill of Rights to conclude that their scheme of government requires what the facts of life reject. As Mr. Justice Rutledge stated: "To say that labor unions as such have nothing of value to contribute to that process [the electoral process] and no vital or legitimate interest in it is to ignore the obvious facts of political and economic life and of their increasing inter-relationship in modern society." *United States v. CIO*, 335 U. S. 106, 129, 144 (concurring opinion joined in by Black, Douglas, and Murphy, JJ). Fifty years ago this Court held that there was no connection between outlawry of "yellow dog contracts" on interstate railroads and interstate commerce, and therefore found unconstitutional legislation directed against the evils of these agreements. Is it any more consonant with the facts of life today, than was this holding in *Adair v. United States*, 208 U. S. 161, to say that the tax policies of the National Government—the scheme of rates and exemptions—have no close relation to the wages of workers; that legislative developments like the Tennessee Valley Authority do not intimately touch the lives of workers within their respective regions; that national measures furthering health and education do not directly bear on the lives of industrial workers; that candidates who support these movements do not stand in different relation to labor's narrowest economic interests than avowed opponents of these measures? Is it respectful of the modes

expend money for a purpose outside the corporate business to which an individual stockholder is opposed. A shareholder who joined prior to the authorization and who therefore cannot be said to have impliedly consented surely is as directly affected as is the member of a union shop. See *A. P. Smith Mfg. Co. v. Barlow*, 13 N. J. 145, 98 A. 2d 581, which upheld against federal constitutional attack a state statute which authorized New Jersey corporations to make contributions to charity. The amounts involved were substantial.

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of thought of Madison and Jefferson projected our day to attribute to them the view that the Amendment must be construed to bar unions from including, by due procedural steps, that civil-rights legislation conduces to their interest, thereby prohibiting union funds to be expended to promote passage of measures? ³⁰

Congress was not unaware that railroad unions might use these mandatory contributions for furthering economic interests through political channels. See Cong. Rec. 17049-17050. That such consequences authorizing compulsory union membership were foreseen had been indicated to committees of Congress than four years earlier when the union shop provisions of the Taft-Hartley Act were being debated. Hearings, Senate Committee on Labor and Public Welfare on S. 55, Cong., 1st Sess., pp. 726, 1452, 1455-1456, 1687, 2146, 2150; Hearings, House Committee on Education and Labor on H. R. 8, 80th Cong., 1st Sess., pp. 350, 351. The failure of the Railway Labor Act amendment to exempt the member who did not choose to have his contributions put to such uses may have reflected difficulty in drafting an exempting clause. See Hearings, Senate Committee of the Senate Committee on Labor and Public Welfare on S. 3295, 81st Cong., 2d Sess., pp. 173-174. In 1958, the Senate voted down a proposal to enable an individual union member to recover any portion of dues not expended for "collective bargaining purposes." 104 Cong. Rec. 11330-11347.

³⁰ See Proceedings of the AFL-CIO Constitutional Convention, Vol. II, pp. 183-192 (1959). •

A recent leader of the London Times which reviewed the report of the British Trade Unions Council noted that the document concerned itself with "few . . . political subjects . . . which are not their industrial sides." The London Times, Aug. 23, 1958, p. 9, col. 2.

Congress is, of course, free to enact legislation along lines adopted in Great Britain, whereby dissenting members may contract out of any levies to be used for political purposes.³¹ "At the point where the mutual advantage of association demands too much individual disadvantage, a compromise must be struck When that point has been reached—where the intersection should fall—is plainly a question within the special province of the legislature. . . . Even where the social undesirability of a law may be convincingly urged, invalidation of the law by a court debilitates popular democratic government. Most laws dealing with economic and social problems are matters of trial and error. . . . But even if a law is found wanting on trial, it is better that its defects should be demonstrated and removed than that the law should be aborted by judicial fiat. Such an assertion of judicial power deflects responsibility from those on whom in a democratic society it ultimately rests—the people." *American Federation of Labor v.*

³¹ The course of legislation in Great Britain illustrates the various methods open to Congress for exempting union members from political levies. As a consequence of a restrictive interpretation of the Trade Union Act of 1876, 39 & 40 Vict., c. 22, by the House of Lords in *Amalgamated Society of Ry. Servants v. Osborne*, [1910] A. C. 87, Parliament in 1913 passed legislation which allowed a union member to exempt himself from political contributions by giving specific notice. Trade Union Act of 1913, 2 & 3 Geo. V, c. 30. The fear instilled by the general strike in 1926 caused the Conservative-Parliament to amend the "contracting out" procedure by a "contracting in" scheme, the net effect of which was to require that each individual give notice of his consent to contribute before his dues could be used for political purposes. Trade Disputes and Trade Unions Act of 1927, 17 & 18 Geo. V, c. 22. When the Labor Party came to power, Parliament returned to the 1913 method. Trade Disputes and Trade Unions Act of 1946, 9 & 10 Geo. VI, c. 52. The Conservative Party, when it came back, retained the legislation of its opponents.

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American Sash & Door Co., 335 U. S. 538, 546, (concurring opinion).

In conclusion, then, we are asked by union men who oppose these expenditures to protect their right of free speech—although they are as free to speak as ever against governmental action which has permitted a union elected by democratic process to bargain for a union and to expend the funds thereby collected for purposes which are controlled by internal union choice. To do so would be to mutilate a scheme designed by Congress for the purpose of equitably sharing the cost of securing benefits of union exertions; it would greatly embarrass and not frustrate conventional labor activities which have become institutionalized through time. To do so would give constitutional sanction to doctrinaire views and grant a miniscule claim constitutional recognition.

In *Everson v. Board of Education*, 330 U. S. 1, the relative power of a State to subsidize bus service to parochial schools was sustained, although the Court recognized that because of the subsidy some parents were unduly enabled to send their children to church schools otherwise would not. It makes little difference whether the conclusion is phrased so that no establishment of religion was found, or whether it be more forthrightly stated that the merely incidental "establishment" was too insignificant. Figures of the Department of Health, Education and Welfare show that the yearly cost of transportation to non-public schools in Massachusetts totals approximately \$659,749; in Illinois \$1,807,740.³² These are scarcely what would be termed negligible expenditures. Some might consider the resulting "establishment" more substantial than the loss of free speech through the

³² Statistics of State School Systems, 1955-1956: Organization, Staff, Pupils, and Finances, c. 2, p. 70 (U. S. Department of Health, Education, and Welfare, 1959).

ment of \$3 per month for union dues, whereby a dissident member feels identified in his own mind with the union's position.

The words of Mr. Justice Cardozo, used in a different context, are applicable here: "[C]ountless claims of right can be discovered to have their source or their operative limits in the provisions of a federal statute or in the Constitution itself with its circumambient restrictions upon legislative power. To set bounds to the pursuit, the courts have formulated the distinction between controversies that are basic and those that are collateral, between disputes that are necessary and those that are merely possible. We shall be lost in a maze if we put that compass by." *Gully v. First National Bank*, 299 U. S. 109, 118.

I would reverse and remand the case for dismissal in the Georgia courts.

SUPREME COURT OF THE UNITED STATES

No. 4.—OCTOBER TERM, 1960.

International Association of
Machinists, et al., Appel-
lants,

v.

S. B. Street, et al.

On Appeal From the
preme Court of Geo

[June 19, 1961.]

MR. JUSTICE WHITTAKER, concurring in part
dissenting in part.

Understanding the Court's opinion to hold—put in
own words—that, in enacting § 2, Eleventh of the
way Labor Act, Congress intended to, and impli-
did, limit the use that railway labor unions may make
dues, fees and assessments, collected from those o-
members who were or are required to become or re-
its members by force of union shop contracts negoti-
as permitted by that section, only to defray the cost
negotiating and administering collective bargaining ag-
ments—including the adjustment and settlement of
putes—and that the *Hanson* case, rightly constr-
upholds no more than that, I join Points I, II and III
the Court's opinion.

But I dissent from Point IV of the Court's opin-
In respect to that point, it seems appropriate to make
following observations. When many members pay
same amount of monthly dues into the treasury of
union which dispenses the fund for what are, under
Court's opinion, both permitted and proscribed activi-
how can it be told whose dues paid for what? . Le-
suppose a union with two members, each paying mon-
dues of three dollars, and that one does but the other
not object to his dues being expended for "proscr

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activity"—whatever that phrase may mean. Of the for a given month, the union expends four dollars admittedly proper activity and two dollars for "proscribed activity," answering to the objector that the dollars spent for "proscribed activity" were not from but from the other's, dues. Would not the result be the objector was thus required to pay not his one-half three-fourths of the union's legitimate expenses? Or not the objector nevertheless paid a ratable part of cost of the "proscribed activity"?

The Court suggests that a proper decree might require "restitution" to the objector of that part of his dues is equal to the ratio of dues spent for "proscribed activity" to total dues collected by the union. But even if the Court could draw a clear line between what is and what is not "proscribed activity," the accounting and practical problems involved would make the remedy most one and impractical. But when there is added to this a recognition of the practical impossibility of judicially drawing the clear line mentioned and also of the fact that the local unions which collect the dues promptly pay part of them to the national union which, in turn, engages in "proscribed activity," it becomes plain that the suggested restitution remedy is impossible of practical performance.

It would seem to follow that the only practical remedy possible is the one formulated by the Georgia courts, which I would approve it.